86-434

No. .....

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1986

MARCH FONG EU, Secretary of State of the State of California; JOHN K. VAN DE KAMP, Attorney General of the State of California; ARLO SMITH, District Attorney of San Francisco County; LEO HIMMELSBACH, District Attorney of Santa Clara County,

Appellants,

v.

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVID E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; and NATIONAL COMMITTEE FOR PARTY RENEWAL,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

Whether provisions of the California Elections Code substantially infringe on the rights of a state political party and its members to freedom of speech and association under the First Amendment where the provisions do not conflict with the policies of the party. The challenged provisions prohibit state and county central committees of a ballot-qualified state political party from endorsing, opposing or supporting candidates for their party nominations at the primary election and prescribe the membership, organization, procedures and the term of the chairperson of the state central committee.

If the provisions are held to be a substantial infringement, whether the state's interests in an orderly and democratic electoral system justify the infringement.

Whether in the absence of a conflict between the provisions of the Elections Code and the policies of the state political party, article III of the United States Constitution and the principles of justiciability and abstention developed by this Court permit a federal court to determine the aforesaid issues if they are raised by anyone other than the party and in particular by the plaintiffs in this case.

Whether summary judgment invalidating the aforesaid provisions of the Elections Code can be entered pursuant to rule 56 of the Federal Rules of Civil Procedure where: 1) defendants presented evidence that the provisions reflected the policies of the state political party

and had been enacted at the behest of or with the active support of the political party; 2) despite defendants' demonstration of need for it to respond to the motion for summary judgment, they were denied any opportunity to conduct discovery and to present further evidence; and 3) the judgment is based on declarations and documentation which are not admissible evidence.

Whether the Eleventh Amendment to the U.S. Constitution permits a federal court to determine that violation of the provisions of the Elections Code by plaintiffs would constitute criminal conduct subject to prosecution by defendants. All defendants attested that they have never been involved in enforcement action of any kind with respect to any of the challenged provisions and asserted without contradiction by California legal precedent that violation of these provisions by plaintiffs does not constitute criminal conduct.

If the Eleventh Amendment does not preclude jurisdiction, whether a case or controversy required by article III exists with respect to such defendants or whether abstention is required in such circumstances.

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ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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JURISDICTIONAL STATEMENT

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit, which is set forth in the Appendix (App.) hereto at pp. 2a-41a, is reported at 792 F.2d 802.

The orders and judgment of the United States District Court for the Northern District of California are not reported. They are set forth at App. 42a-78a.

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JURISDICTION

This appeal is from the final judgment of the United States Court of Appeals for the Ninth Circuit filed June 18, 1986, affirming summary judgment entered by the United States District Court for the Northern District of California on April 16, 1984.

The District Court held that provisions of the California Elections Code violated the Freedom of Speech and Free Association Clauses of the First Amendment of the United States Constitution, as applied to the states through the Fourteenth Amendment, and 42 U.S.C. § 1983, and were therefore invalid. The District Court enjoined appellants from enforcing said provisions.

The affected provisions of the Cal. Elec. Code prescribe the membership of the state central committees of the California Republican and Democratic parties, the terms of the chairpersons of the state central committees of the California Libertarian and Republican parties and prohibit endorsements by state and county central committees of primary ballot-qualified state political parties of candidates for their respective party's nominations at the primary election.

The Court of Appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and Fed. R. Civ. P. 54(b). By order filed

August 14, 1986, the Court of Appeals has stayed issuance of its mandate pursuant to Fed. R. App. P. 41(b), until disposition of the appeal if it is docketed with this Court by September 16, 1986. (App. 82a.)

Notice of appeal to this Court was filed with the Clerk of the United States Court of Appeals for the Ninth Circuit on behalf of all appellants on August 14, 1986. (App. 79a-81a.)

This appeal is being docketed in this Court within 90 days from the entry of judgment below. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(2).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

First Amendment, United States Constitution:

> Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people peaceably to assemble. . . .

Fourteenth Amendment, United States Constitution:

> . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. . . .

42 U.S.C. § 1983:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or

causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

Federal Rules of Civil Procedure, rule 56:

. . .

(c) . . . The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

. . .

(f) WHEN AFFIDAVITS ARE UNAVAILABLE. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

California Constitution, article II, section 6.

California Elections Code sections:

37 (defines non-partisan office),

8660, 8661, 8663, 8664, 8665, 8667 and 8669 (membership of the Democratic State Central Committee);

8710 (time for meeting of Democratic State Central Committee);

8920 and 8921 (time and place for first meetings of Democratic county central committees);

9160, 9160.5, 9161, 9161.5, 9162, 9163, 9164 (membership of Republican State Central Committee);

9210 (time for first meeting of Republican State Central Committee);

9274 (term of chairperson of Republican State Central Committee);

9275 (limitation on dues for members of Republican State Central Committee);

9420 and 9421 (time for meeting of Republican county central committees);

9800 (applicable to meeting of the Libertarian State Central Committee);

9816 (applicable to term of chairperson of Libertarian State Central Committee);

9818 (applicable to dues payable by members of Libertarian State Central Committee);

9830, 9840 and 9841 (applicable to meetings of Libertarian county central committees);

9855 (applicable to dues payable by members of Libertarian county central committees);

11702 (prohibits endorsement by party state and county central committees of candidates for the party's nomination for partisan office at the primary election);

29102 (provides penalties for violations of laws relating to elections);

29430 (provides a penalty for claiming an endorsement as official candidate of political party in the primary election).

The text of the foregoing provisions of the California Elections Code and California Constitution are set forth in App. 288a et seq.

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STATEMENT OF THE CASE

As the opinion of the U.S. Court of Appeals for the Ninth Circuit in this case notes, at the turn of this century California adopted a direct primary election system "which transferred the power to nominate candidates from party organizations to the voters themselves." (App. 7a.) Early in the evolution of the primary election system, State law required ballot-qualified political parties to maintain state and county central committees. (*Id.*) State law prescribes the membership of the state and county central committees for each of the ballot-qualified parties, the terms of the chairpersons thereof and other organizational and procedural features of these committees.[1]

By political tradition in California the predecessors of the statutorily mandated committees did not endorse candidates for the nomination of their party at its nominating conventions. The role of central committees in the pre-primary election era had been to accept and campaign for the conventions' nominees. The primary election law expressly provided that the committees are to conduct the *party* campaign for its nominees selected at the primary

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1. Cal. Elec. Code §§ 8660 and 8820, et seq. (Democratic Party); 9160 and 9320, et seq. (Republican Party); 9640 and 9700, et seq. (American Independent Party); 9790, et seq. and 9830, et seq. (Peace and Freedom Party); 9995 (other ballot-qualified parties, including the Libertarian Party, must adopt one of the foregoing central committee structures).

election.[2] California law did not expressly prohibit the committees from endorsing candidates for their respective party's nominations.

However, an opinion issued by the Attorney General of California in 1954 (App. 140a-148a) reviewing the history of the primary election law and the practices of party central committees pursuant to that law concluded that pre-primary endorsements by central committees were inherently inconsistent with their statutorily mandated duty of conducting the party campaign for the nominees selected by the members of the party at the primary election so that the practice was impliedly prohibited by law. The incompatibility of pre-primary endorsements and the duty of conducting the party campaign was acknowledged to be readily apparent from the tradition of abstinence by the committees themselves and the common sense conclusion that a committee which has opposed a candidate or endorsed an opponent of a candidate who is actually nominated by the members of the party at the primary election will in all likelihood be incapable, or less capable than it could be, of carrying out the party's campaign for that candidate. (*Id.*)

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2. The state central committees are mandated by statute to "conduct *party* campaigns for this party and in behalf of the candidates of this party" (emphasis added) and this is virtually the sole duty mandated by statute to these committees. (Slip opn. of Ninth Circuit (App. 9a). Cal. Elec. Code §§ 8776 and 8940 (Democratic Party); 9276 (Republican Party); 9688 (American Independent Party); 9819 (Peace and Freedom Party).) §§ 8940, 9440, 9740 and 9850 mandate county central committees in virtually identical language:

"A committee shall have charge of the party campaign under general direction of the state central committee or of the executive committee selected by the state central committee."

In 1963, California enacted a "Truth in Endorsements Law" (Cal. Elec. Code § 11700 et seq.) which prohibited publications appearing to endorse candidates for the nomination of a ballot-qualified party in primary elections that utilized identifying words contained in the name of the party unless a prescribed statement that the "endorsement hereon is by an unofficial political group" appeared on the publication. Criminal sanctions were established for claims by a candidate for the nomination of a political party for partisan office or on behalf of a candidate that he or she is the officially endorsed candidate of the party. (Cal. Elec. Code § 29430 at App. 303a.)

The statute was enacted to combat a widespread practice of particular organized factions within the ballot-qualified parties of publishing slates of endorsements which misled voters into believing the endorsements had been made by the political party. Such representations were inherently fraudulent because the primary election system establishes the votes of the members of the party at the primary election as the voice of the party and the official determiner of the candidates of the party. As part of this statute, the implicit prohibition on endorsements by central committees was made explicit for the first time by enactment of the predecessor to Cal. Elec. Code § 11702. (App. 303a.)

None of the named defendants has ever been involved in the enforcement of the prohibition of Elec. Code § 11702 and none of them has viewed a violation thereof as constituting a criminal offense defined by any provision of the Cal. Elec. Code. (App. 98a-104a and 125a-139a.) Elec. Code § 11702 is not a penal statute. Elec. Code § 29430 is

a penal statute which applies only to a "candidate" or "other person claim[ing] on his behalf, that he is the official candidate or the officially endorsed candidate of that party." This language has been construed to mean a "candidate or his workers." (*People v. Crutcher* (1968) 262 Cal.App.2d 750, 752-753, 68 Cal.Rptr. 904, 906.)

Thus, party central committees and their members would not be within the ambit of § 29430 if they endorsed, opposed or supported candidates for their party's nomination for partisan office at the primary election. Moreover, the proscribed conduct is the fraud of claiming to be the "official candidate or the officially endorsed candidate of the party." An endorsement by a central committee cannot confer such status on a candidate; it is attained only by receiving the party's nomination at the primary election.[3]

The existence of the statutory prohibition of Elec. Code § 11702 provides members of a ballot-qualified political party with the means to invoke the state judicial power to enforce the right they have traditionally had in California politics to central committees which do not endorse, support or oppose candidates for the party's nomination for partisan office. California adheres to the view that a political dispute within a political party is not justiciable unless there is a statute which controls the issue. (Cf. *Malone v. Superior Court* (1953) 40 Cal.2d

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3. The basis for plaintiffs' allegation that party central committees, their members, and individual party members who take part in the process are subject to criminal prosecution for endorsing candidates for the party nomination for partisan office is Elec. Code § 29430. (See paragraphs 38 and 39 of First Amended Complaint. App. 256a.)

546, 551-552, 254 P.2d 517, 520.) A case brought by a member of the Republican Party invoking the political right protected by Elec. Code § 11702 is currently pending before the California Supreme Court in *Spinosa v. Republican County Central Committee of San Francisco* (Docket No. SF 24914.)[4]

Members of county central committees are elected by members of their party at primary elections conducted by the state. (See e.g., Cal. Elec. Code §§ 8870 et seq.) Their election obligates them to carry out the function and purpose of the committee which is, under the general direction of the state central committee, to conduct their party's campaign for its nominees for partisan office selected at the primary election.[5] (Cal. Elec. Code §§ 8940, 9276, and 9850.) The derivative obligation not to endorse, support, or oppose candidates is the traditional limitation on the authority of central committees in California party politics that is enforceable by party members through the existence of Elec. Code § 11702. County central committee members are elected knowing and on the condition that as a com-

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4. The First District of California Court of Appeal held in this case that Elec. Code §11702 prohibited the county central committee from endorsing a Republican candidate in a special election to fill a vacant Congressional seat. The plaintiff was a Republican candidate for that office in competition with the candidate who was endorsed. Pursuant to California Rules of Court, the decision of the Court of Appeal was vacated when the Supreme Court granted the petition for review.

5. Although members of central committees are elected at the June primary election, they typically do not assume their duties until January of the following year so that the committee in existence at the primary conducts the party's campaign at the November general election. (Cal. Elec. Code §§ 8920 [Democratic]; 9420 [Republican].)

mittee they will not endorse, support, or oppose candidates for their party's nomination in the primary election.

As this Court noted in *American Party of Texas v. White* (1974) 415 U.S. 767, 787: "Hard work and sacrifice by dedicated volunteers are the lifeblood of any political organization." This acknowledgement could aptly serve as the job description of members of county central committees according to the terms of their mandate upon election. If county committees could endorse candidates for the party's nomination, and with such power could continue as a viable institution in California politics, it is entirely likely that a different type of person would be elected to such committees than is elected now.

Party central committees must loyally carry out the party will manifested by nominees selected at the primary by conducting the party campaign for such nominees. In the California direct primary system any voter complying with registration requirements can affiliate with and vote in the primary election of any ballot-qualified party. (See Cal. Elec. Code §§ 501 and 10200.5.) No purported party organization can exclude anyone from membership in a ballot-qualified party.

In such circumstances, a ballot-qualified party defines itself by the nominees it selects to compete in the general election for the policy-making offices of the California and federal governments. The political ethos and traditions of California politics require that a party organization exist which is dedicated to conducting party campaigns on behalf of the party's nominees, whoever they are.[6] As an

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6. If voters in California desire to associate politically and exercise the power to exclude persons with incompatible views

(Continued on following page)

integral part of its primary election system California has through Elec. Code § 11702 provided members of ballot-qualified parties a means of enforcing that political right.

Plaintiffs, associated as the National, Northern and Southern California Committees for Party Renewal, believe that the challenged provisions of the Elections Code "have seriously weakened and debilitated the state political parties." (App. 253a.) Plaintiffs either did not attempt, or failed in the attempt, to convince their fellow party members of this proposition. The state political parties do not have rules which conflict with the challenged statutes nor have they adopted resolutions calling for the repeal of the statutes.[7] Neither the Republican nor Democratic state central committees or officers thereof are parties to this litigation.

Notwithstanding this lack of interest by the state political parties, plaintiffs brought suit in the U.S. District Court for the Northern District of California against defendants, who have had no role in the enforcement of the challenged statutes, to invalidate the statutes as violations of the First Amendment rights of the California Republican, Democratic and Libertarian parties and themselves as members or institutions thereof. The first amended complaint (App. 243a-284a) was filed on or about December 3, 1983.

(Continued from previous page)

from participation in their functions but still compete for control of state and federal policy-making offices, they can place candidates on the general election ballot through the independent nomination process. (Cal. Elec. Code § 6400 et seq.) Moreover, they can work to elect their candidates through the "write-in" process. (Cal. Elec. Code §§ 17100-17101.)

7. Repeal could be affected through action of fellow party members in the State Legislature or through the initiative process. (Cal.Const., art II, §§ 8, 10.)

Answers were filed in December 1983 by the District Attorney of Los Angeles County and by the Attorney General on behalf of himself, the Secretary of State and the district attorneys of San Francisco, Santa Clara and Placer counties.[8] The answers: 1) placed the material allegations of the first amended complaint at issue; 2) challenged the subject matter and constitutional jurisdiction of the District Court; 3) raised the insufficiency of the complaint to establish plaintiffs' capacity to sue; 4) objected that necessary or interested parties had not been joined; 5) urged that the court abstain from exercising jurisdiction as to any cause of action so that state courts could determine enforcement responsibility and assess the scope of the challenged statutes and their constitutionality and because the issues were not ripe for adjudication and were political questions; and 6) asserted the failure of the first amended complaint to allege facts for which relief could be granted against defendants.

At about the same time the answers were filed, plaintiffs served sets of requests for admissions and production of documents and interrogatories on the Secretary of State and the Attorney General. The responses provided plaintiffs in late January and early February 1984

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8. Defendant district attorneys of Alameda, Contra Costa and Solano counties filed answers by way of disclaimer of interest in the litigation distinct from the other defendants and sought leave to refrain from participation therein which was granted by the District Court. (App. 235a.)

were voluminous and had been very time consuming to locate, assemble and produce.

In order that the litigation might be resolved sufficiently in advance of the June 1984 primary election so that plaintiffs could endorse candidates, they requested at the status conference, and the District Court issued an order from the bench over defendants' objections (App. 237a-241a), that all motions concerning jurisdiction and the merits be filed within one week thereafter.[9] As ordered, defendants filed a motion to dismiss based on the failure of the first amended complaint to allege facts sufficient to establish a case or controversy pursuant to Art. III of the U.S. Constitution or to state a cause of action and on the non-justiciability thereof and on the ground that abstention was appropriate. Plaintiffs filed a motion for summary judgment consisting of 350 pages of documentation including 25 declarations and 19 exhibits.

In response to the motion for summary judgment, defendants contended through exposition of the facts stated hereinbefore that there had been no demonstration that the challenged statutes created a substantial burden on the First Amendment rights of the parties. A declaration was submitted demonstrating that the statutes had been enacted at the behest of or with the active support of the major political parties. (App. 105a-113a.) The declaration was supplemented with the by-laws of the California Democratic and Republican parties which manifest organiza-

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9. Documents produced by plaintiffs after the appeal had been argued and initially submitted in the Ninth Circuit indidate that the Committee for Party Renewal had been preparing the case for two years before it was filed.

tions, membership and procedures of their state central committees that are consistent with the challenged statutes. (App. 140a-231a.) Defendants relied on the same declaration in support of their contention that each statute was necessary to further a compelling state interest in the stability and fairness of its electoral system. Defendants also responded with a declaration demonstrating pursuant to Fed. R. Civ. P. 56(f) that discovery was essential to respond to documentation and declarations submitted by plaintiffs (App. 114a-124a) if over defendants' objections as to the sufficiency of the declarations as evidence the court were to rely upon them.

At the hearing on the motions held on April 9, 1984, the District Court heard argument and announced a ruling: (1) denying defendants' motions; (2) abstaining from deciding but retaining jurisdiction on the cause of action regarding a supposed statutory bar on endorsements by central commitees of candidates for non-partisan offices; (3) denying plaintiffs' motion for summary judgment as to those statutes prescribing meeting times and dues limitations; (4) but granting the motion as to the bar on partisan endorsements and prescription of membership and terms of chairpersons of state central committees. (App. 42a-66a.) The District Court rejected defendants' request for an opportunity to respond to additional declarations submitted by plaintiffs, which had been served on defendants at the hearing, and to conduct discovery as indicated in their declaration in response to the motion or, in the alternative, a stay pending appeal, and instructed them that their only recourse was to the Court of Appeals.

Judgment was entered on April 16, 1984. On the same day defendants filed their notice of appeal and emer-

gency motion to the Ninth Circuit for a stay pending appeal. By order filed April 24, 1984, the Court of Appeals granted the motion for a stay and, the motions panel apparently having constituted itself on the panel to decide the appeal, ordered the appeal to be heard on May 15, 1984, and any additional briefing by the parties to be filed simultaneously on May 8, 1984. (App. 88a.) The opinion of the District Court was filed on May 3, 1984. (App. 42a.)

After the matter had been argued the Court of Appeals issued an order on May 25, 1984, partially remanding the case to the District Court. (App. 87a.) The District Court responded with an order filed June 1, 1984. (App. 73a-78a.) The course of further proceedings of the Court of Appeals prior to issuance of its judgment on June 18, 1986, is outlined by orders set forth at App. 83a-86a. The significance of the proceedings and judgment are discussed *infra*.

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FEDERAL QUESTIONS ARE SUBSTANTIAL

There are two compelling reasons this Court should accept jurisdiction and afford plenary review of this case.

1. First, this case manifests the need to resolve the confusion and the resulting damage to states' authority to regulate their electoral systems created by the failure of lower federal courts to distinguish between decisions of this Court typified by *Storer v. Brown* (1974) 415 U.S. 724 and *Marchioro v. Chaney* (1979) 442 U.S. 191 which outline the First Amendment considerations applicable to the states' ability to regulate state political parties and those decisions which define constraints on state regulation of national political parties typified by *Democratic*

Party v. Wisconsin ex rel. La Follette (1981) 450 U.S. 107, *Cousins v. Wigoda* (1975) 419 U.S. 107 and *Williams v. Rhodes* (1968) 393 U.S. 23.

As Mr. Justice Powell noted in his concurring and dissenting opinion in *Cousins v. Wigoda, id.*, at fn., p. 497: "I also agree with the Court that this case intimates no views regarding other efforts to regulate party conventions. Congressional regulation of national conventions or state regulation of state primaries or conventions for state offices raises different considerations requiring a wholly different balance."

In *Marchioro v. Chaney, id.*, at 196-197, this Court recognized that state statutes prescribing the existence and composition of central committees for state political parties and vesting them "with authority to perform limited functions . . . directly related to the orderly participation of the political party in the electoral process" serve an unquestionably legitimate state interest in promoting an orderly and fair electoral process which the Court acknowledged earlier in *Storer v. Brown, id.*, at 730. As the Court noted in *Marchioro, id.*, at n. 11, p. 195, California is among the states with such statutes.

California requires that all of its primary election ballot-qualified political parties have state and county central committees and prescribes the membership thereof. The state central committees are mandated by statute to "conduct *party* campaigns for this party and in behalf of the candidates of this party" and this is virtually the sole duty mandated by statute to these committees. Plaintiffs-appellees have not questioned the constitutionality of mandating this function to the state and county central com-

mittees just as the plaintiffs in *Marchioro* did not question the statutorily mandated duties of the state committees for political parties in the State of Washington (442 U.S. at 197). Nor do they question mandate's direct relationship to promotion of an orderly and fair electoral process.

The role of a central committee, being in charge of the party's campaign for its nominees in the general election, enables it to provide a catalyst through which the intra-party bitterness and competiveness of the primary election contest can be diffused, mediated, and transformed by its having access to the resources previously devoted to unsuccessful candidates or factions which otherwise would be unavailable to the nominees. The resources brokered by the central committee can either be directed to the nominees' own campaigns or into precinct work, advertisements, such as slate mailings, and other activities conducted by the central committee on behalf of the party nominees. These considerations were presented to the District Court through declarations and documentation. (See App. 106a-108a and 146a-147a.)

The mandated role of the central committee serves an interest of California which this Court characterized as "compelling" in *Storer v. Brown*, *supra*, 415 U.S. at pp. 734-736. Measures taken to deflect intra-party rivalry aroused in the primary election from carrying over to the general election, which in *Storer* was the prohibition on candidates defeated in the party primary competing against the party nominee in the general election, were acknowledged to further "the state's interest in the stability of its political system" because diffused intra-party rivalry in the general elections enables political parties'

candidates to constitute "understandable choices" and promotes securing the party "win[ning] in the general election with sufficient support to govern effectively." The principle that the First Amendment does not exclude states from regulating the internal relationships of members of ballot-qualified political parties was heralded with specific reference to California's political tradition when the court stated:

> "A state need not take the course California has, but California apparently believes with the Founding Fathers that splintered parties and unrestrained factionalism may do significant damage to the fabric of government."

A central committee which is embroiled in the intra-party feuding of the primary election by endorsing candidates, whether they win or lose, can deprive the party of the neutral broker for marshalling the resources of the party for the general election which state law and political tradition have provided for it. (See App. 106a-108a and 146a-147a.) The statutory ban on such endorsements enforceable by party members, which is essential to preservation of the vehicle for promoting the state's interest in a stable political system, must be considered to have the same constitutional validity as the vehicle itself.[10]

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10. The California political tradition and ethos of rejecting the politics of unrestrained factionalism and adhering to the ban on endorsements by party central committees is unquestionably alive and well. At the June 3, 1986, primary election, Proposition 49 to amend section 6 of article II of the California Constitution to prohibit party central committees from endorsing candidates for non-partisan office was adopted by 55.9% of

(Continued on following page)

Moreover, there was very significant evidence before the District Court that the challenged statutes reflect the policies of the political parties.

The bylaws of the California Democratic and Republican parties introduced into the record by defendants (App. 149a-231a) indicate that each party has adopted the statutorily prescribed central committees as their governing bodies with duties in addition to the only duty prescribed by statute—to conduct the campaign of the party.[11] In *Marchioro v. Chaney, supra,* 442 U.S. at 195-199, the same situation by virtue of being voluntary was held not to constitute a substantial infringement of the party's First Amendment rights especially where plaintiffs did not challenge the duties assigned to the committee just as plaintiffs herein have not. The Libertarian state central committee does not purport to challenge the membership prescribed for it by statute.

(Continued from previous page)

the vote. (Statement of the Vote by the California Secretary of State for June 3, 1986 Primary Election, at p. 50.) The amendment nullifies the holding in *Unger v. Superior Court* (1984) 37 Cal.3d 612, 209 Cal.Rptr. 474, 692 P.2d 238, that California law did not ban such endorsements. A cause of action in this case was that pre-existing law did ban such endorsements. (See App. 264a-276a.) The District Court abstained on that cause of action while *Unger* was pending before the California Supreme Court.

11. Defendants also submitted a declaration of former State Senator Albert S. Rodda, Jr. which provides testimonial evidence based on his long-term experience as a state legislator and member of the Democratic State Central Committee that the challenged statutes affecting the major political parties were enacted "at the request and with the concurrence of the party affected." (See App. 106a-107a.) Senator Rodda also testified that the major parties also have consistently supported the statutory ban on endorsements. (App. 107a.)

The lower courts in this case viewed this Court's decisions regarding state interference with the national party conventions as an absolute ban on state regulation of political party activity generally and as superseding the cases which indicate that different considerations are involved with state regulation of state political parties. The decisions below, which are premised on this perception, will invalidate key features of California's political tradition and ethos which is still vital after seventy years of defining its direct primary system. The compelling circumstances of this case warrant this Court accepting jurisdiction and affording plenary review to further explore the aforesaid unresolved constitutional issues.

2. Moreover, the manner in which the Ninth Circuit and the District Court dealt with the significance of the Republican and Democratic bylaws in terms of *Marchioro* and jurisdictional analysis and with other matters discussed, *infra*, so far departed from the accepted and usual course of judicial proceedings that this Court should accept jurisdiction and afford plenary review to exercise its power of supervision concerning issues of justiciability, constitutional jurisdiction, and proper implementation of rule 56 of the Federal Rules of Civil Procedure. (Cf. rule 17.1(a) of this Court.)

The Court of Appeals asserts that appellants "made no showing that the political parties have voluntarily adopted the statutory restrictions"; and elaborates that "[i]ndeed, the uncontroverted affidavits of *party representatives* indicate the contrary: they would reform the composition of their parties' central committees if the statutes were invalidated." (App. 15a; emphasis added.)

In responding to plaintiffs' motion for summary judgment defendants filed the bylaws of the Republican and Democratic parties and the declaration of Albert Rodda as described, *supra,* at p. 20 and n. 11. Senator Rodda's statements concerning amendments to statutes regarding the structure of the central committees of the major parties being at their request are based on his personal knowledge as a state legislator for 22 years and a member of the Democratic state central committee for the same period. Moreover, as this Court noted in *Anderson v. Celebrezze* (1983) 460 U.S. 780, 803, n. 30, election laws of most states are established by the major parties.

Thus, at the very least defendants presented evidence from which inferences could be drawn that the statutes are not in conflict with the policies of the parties concerning their structure and organization and that the parties actually support the statutes. Such evidence could support a finding after a trial that the statutes prescribing the structure of a ballot-qualified party do not substantially burden the First Amendment rights of the party and its members. The evidence certainly demonstrates that there is a genuine issue of material fact for trial and that summary judgment is not authorized pursuant to Fed. R. Civ. P. 56.

Nevertheless, the District Court and the Court of Appeal ruled on the summary judgment motion as if they were reviewing the record of a trial and in effect made findings resolving what they perceived as conflicting inferences or based on their perception of the weight of the evidence. Of course, the defendants were precluded by

the course this case took from conducting discovery[12] or putting on evidence at a trial. The issue of the impropriety of summary judgment in this case was raised by defendants on appeal. (App. 92a-93a.) The opinion of the Court of Appeals does not address this issue.

This Court has had occasion to instruct that proper judicial administration of Rule 56 requires that where as here the manner in which a governmental program or system works is critical to resolution of a constitutional claim

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12. Defendants submitted a declaration pursuant to Fed. R. Civ. P. 56(f) regarding the need for discovery to respond to plaintiffs' voluminous motion for summary judgment concerning the issues of substantial infringement and standing. (App. 114a-124a.) The District Court acknowledged that defendants could not conduct formal discovery in response to the motion (App. 232a-234a) and the Court of Appeal acknowledged that the preclusion of discovery was prejudicial in a partial remand to the District Court on May 25, 1984. (App. 87a.) The District Court's order filed June 1, 1984, in response to the remand rejected any opportunity for discovery. (App. 74a-78a.) The District Court ruled within a week of the order on remand without conducting a hearing, receiving any briefing from the parties or considering anything which was not in the record prior to appeal. The remand order issued because defendants provided the Court of Appeals with evidence received from members of one of the purported plaintiff county central committees after judgment had been entered by the District Court that the committee had not authorized participation in this litigation. After the District Court order on remand was filed plaintiffs produced bylaws and what purported to be minutes, heavily censored, of most of the purported plaintiff county central committees. These documents raised very serious questions as to whether any of the purported plaintiff committees including the Libertarian state central committee had authorized participation in this litigation. On June 18, 1984, the Court of Appeals authorized briefing on the subject of committee authorization. (App. 86a.) The Court of Appeal was provided with the documents produced by plaintiffs along with briefs from appellants and appellees. The opinion of the Court of Appeals does not address these issues.

the matter should not be decided "without fully developing the factual record at a hearing." *Askew v. Hargrave* (1971) 401 U.S. 476, 479; see also *Kennedy v. Silas Mason Co.* (1948) 334 U.S. 249, 257. This case demonstrates a critical need for this Court to reassert and enforce this important principle in the administration of the federal judiciary.

The circumstances of the lower court's handling of the "substantial infringement" question raise even more fundamental issues of constitutional adjudication. The absence of the state central committees of the Republican and Democratic parties from this litigation and the total absence of any formal action by either calling for the repeal of or enacting rules in conflict with the statutes at issue in this litigation highlight serious problems of justiciability.

The Court of Appeals referred to plaintiffs as "party representatives" who reflect the position of their parties. There is no basis for this conclusion in the record. As indicated in n. 12, *supra,* there are serious questions as to whether the only political party entities purportedly parties to this litigation have authorized such participation. There are 58 counties in California. Only one Republican county central committee and six Democratic county central committees are purportedly parties to this litigation. Some of the Democratic committees did not subscribe to all of the causes of action which turn out to be the same causes to which their plaintiff chairpersons are not parties. The Committee on Party Renewal recruited central committees for this litigation for two years. Even if the subscription of committees is authentic it is hardly representative of either political party. Moreover, these committees were not elected to be party policy makers; they were elected to conduct general election campaigns for the party.

There is nothing in the record of this case to indicate that the adjudication of the validity of the challenged statutes constitutes anything other than an advisory opinion with respect to state central committee structure and bestowal of a political advantage on members of an ideological faction to make endorsements in the name of an entire party when they were elected with the long-standing political disability to do so.

Absent a clear showing of conflict between party policy and state statutes such as that manifested in *Republican Party of State of Conn. v. Tashjian* (2d Cir. 1985) 770 F.2d 265, 268-270, *prob. juris. noted,* 106 S.Ct. 783 (1986) (Docket #85-766), a claim that there is a substantial burden on the party's First Amendment rights cannot reasonably be considered justiciable within the limitations of article III of the U.S. Constitution. In *Tashjian, id.,* the state central committee developed a proposed party rule change to allow unaffiliated electors to vote in the Republican primary; the committee called a convention of the party at which the rule was adopted; the rule conflicted with a state statute prohibiting unaffiliated voters from participating in a party primary; Republican state legislators introduced legislation to permit unaffiliated participation where party rules allow; the Democratically controlled Legislature rejected the legislation; litigation then ensued.

CONCLUSION

For the reasons presented above probable jurisdiction should be noted and the Court should set the matter for plenary consideration.

DATED: September 15, 1986

Respectfully submitted,

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86-434

No. .....

Supreme Court, U.S.
FILED
SEP 15 1986
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1986

—o—

MARCH FONG EU, Secretary of State of the State of California; JOHN K. VAN DE KAMP, Attorney General of the State of California; ARLO SMITH, District Attorney of San Francisco County; LEO HIMMELSBACH, District Attorney of Santa Clara County,

Appellants,

v.

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVID E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; and NATIONAL COMMITTEE FOR PARTY RENEWAL,

Appellees.

—o—

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

—o—

APPENDIX TO JURISDICTIONAL STATEMENT

—o—

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FOR PUBLICATION

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-1851

DC No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVID E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; and NATIONAL COMMITTEE FOR PARTY RENEWAL,

Plaintiffs-Appellees,

v.

MARCH FONG EU, Secretary of State of the State of California; JOHN VAN DE KAMP, Attorney General of the State of California; ARLO SMITH, District Attorney of San Francisco County, et al.,

Defendants-Appellants.

Appeal from the District Court for the
Northern District of California
Hon. Marilyn Hall Patel, District Judge, Presiding

OPINION

(Filed June 18, 1986)

Argued and Submitted May 15, 1984—San Francisco, CA
Withdrawn from Submission August 5, 1985
Resubmitted November 27, 1985

Before: WRIGHT, SKOPIL and NORRIS, Circuit Judges

NORRIS, Circuit Judge:

This case involves a First Amendment challenge to various sections of the California Elections Code. The challenged sections specify the membership of the state central committees of ballot-qualified political parties and the term of office of committee chairs, and prohibit both state and county central committees from endorsing candidates in party primaries.

Plaintiffs are various county central committees of the Democratic and Republican parties, the state central committee of the Libertarian party, members of these and other party central committees, and various other groups and individuals active in partisan politics in California. They sued the Secretary of State and Attorney General of California and the district attorneys of various counties (hereinafter, "the Secretary") for declaratory and injunctive relief under 42 U.S.C. § 1983 seeking to vindicate their asserted First Amendment right to endorse candidates running in California's direct primary elections and to structure and conduct their internal affairs free of unjustified interference by the state.[1]

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[1] The First Amendment is made applicable to the states through the Fourteenth Amendment. *See, e.g., Edwards v. South Carolina*, 372 U.S. 229, 235 (1963); *Schneider v. State*, 308 U.S. 147, 160 (1939).

In the first count of their first amended complaint, plaintiffs challenge the constitutionality of Cal. Elec. Code § 11702, which prohibits state and county central committees from endorsing, supporting, or opposing candidates for partisan office in direct primary elections. Plaintiffs' second count challenges sections of the Elections Code and the state constitution that prohibit central committees from endorsing candidates in nonpartisan county, city and school elections. Plaintiffs' third count challenges Code sections that prescribe the membership of state central committees, the term of office of state committee chairpersons, the time and place of state and county central committee meetings, and the dues to be paid by county committee members.

Plaintiffs moved for summary judgment on all three counts. In response, the Secretary moved to dismiss the amended complaint under Fed. R. Civ. P. 12(b)(1) and (6) and cross-moved for summary judgment. The district court granted summary judgment on plaintiffs' first count, ruling that section 11702's ban on preprimary endorsements violated the First Amendment. The court stayed all proceedings on plaintiffs' second count under the abstention doctrine of *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941). The court granted partial summary judgment on plaintiffs' third count, ruling that the sections prescribing the membership of state central committees and the term of their chairs violated the First Amendment.[2] The court, however, denied plaintiffs' mo-

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[2] The district court invalidated the following sections: Cal. Elec. Code §§ 8660, 8661, 8663-67, 8669 (Democratic State Central Committee); §§ 9160, 9160.5, 9161, 9161.5, 9162-64 (Republican State Central Committee) (West Supp. 1984); § 9274 (Republican State Central Committee Chairman); and § 9816 (Peace & Freedom State Central Committee Chairperson) (West 1977).

tion for summary judgment with respect to those Code sections regulating the time and place of committee meetings and county committee dues. The court also denied in all respects the Secretary's motion to dismiss and cross-motion for summary judgment.

Although the district court did not finally dispose of all issues with respect to all parties, it directed the entry of final judgment for plaintiffs under Fed. R. Civ. P. 54(b) on the first count and as to those claims in the third count decided in plaintiffs' favor.[3] Accordingly, we have jurisdiction to hear the Secretary's appeal under 28 U.S.C. § 1291 (1982).

I

Plaintiffs contend that California's political parties and their governing bodies—the state and county central committees—are voluntary associations entitled to the full protection of the First Amendment. They argue that California's prohibition of preprimary endorsements and the state's regulation of party structure and internal affairs abridge their freedom of political expression and association.[4] In response, the Secretary argues that the

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[3] We review a summary judgment *de novo*. *Lojek v. Thomas*, 716 F.2d 675, 677 (9th Cir. 1983). Summary judgment is appropriate if "there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(b). We also review *de novo* the district court's denial of the Secretary's motion to dismiss under Fed. R. Civ. P. 12(b)(1) & (6) for want of subject matter jurisdiction and for failure to state a claim upon which relief may be granted. *See, e.g., Trerice v. Pedersen*, 769 F.2d 1398, 1400 (9th Cir. 1985).

[4] Plaintiffs also claim that the state's regulation of ballot-qualified parties violates their rights to equal protection of the laws under the Fourteenth Amendment. It is unnecessary to reach this claim.

state and county central committees of ballot-qualified political parties in California do not enjoy First Amendment status because they are public entities, not private associations. In the alternative, the Secretary argues that the challenged provisions of the Election Code pass First Amendment muster because they are narrowly drawn regulations that serve compelling state interests.

"Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association." *Sweezy v. New Hampshire,* 354 U.S. 234, 250 (1957). Because "[e]xercise of these basic freedoms . . . has traditionally been through the media of political associations," *id.,* political parties as well as individual party adherents enjoy First Amendment rights. *See Democratic Party v. Wisconsin ex rel. La Follette,* 450 U.S. 107 (1981); *Cousins v. Wigoda,* 419 U.S. 477 (1975).[5] Moreover, "[a]ny interference with the freedom of a party is simultaneously an interference with the freedom of its adherents." *Sweezy,* 354 U.S. at 250; *see Republican Party v. Tashjian,* 770 F.2d 265, 278 (2nd Cir. 1985), *prob. juris noted,* 106 S. Ct. 783 (1986). Finally, courts have "placed the internal workings of a political party squarely within the protection of the First Amendment." *Ripon Society Inc. v. National Republican Party,* 525 F.2d 567, 586 (D.C.Cir. 1975), *cert. denied,* 424 U.S. 933 (1976).

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[5] *See also* Weisburd, *Candidate-Making and the Constitution: Constitutional Restraints on and Protections of Party Nominating Methods,* 57 S.Cal.L.Rev. 213, 265 (1984) [hereinafter Weisburd, *Candidate-Making and the Constitution*] ("parties as parties have associational rights").

In this case we must apply these settled First Amendment principles to the restrictions imposed on California political parties by various provisions of the California Elections Code. To place the important constitutional questions presented by this appeal into perspective, we will first provide an overview of state regulation of political parties in California.

Like our national political parties,[6] California's political parties were originally unregulated voluntary associations of individuals "governed largely by custom and usage." *Unger v. Superior Court,* 37 Cal.3d 612, 615, 692 P.2d 238, 209 Cal. Rptr. 474 (1984) (*Unger II*); *see also* 59 Ops. Cal. Atty. Gen. 60 (1976); 23 Ops. Cal. Atty. Gen. 119, 120 (1954) (citing *Spelling v. Brown,* 122 Cal. 277, 279, 55 P. 126 (1898)). These voluntary associations "fix[ed] membership criteria, nominat[ed] candidates for public office, conduct[ed] their campaigns, and shap[ed] their platforms" with neither recognition nor interference from the state. Friedman, *Reflections Upon the Law of Political Parties,* 44 Cal. L. Rev. 65, 66 (1956); *see also Spier v. Baker,* 120 Cal. 370, 380, 52 P. 659 (1898). Internal party decisions were generally made at party conventions where choices as important as "who shall represent [the] party on the election day ballot [were] left exclusively to a select group of its leaders." J. Owens, E. Costantini & L. Weschler, *California Politics and*

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[6] *See, e.g., O'Brien v. Brown,* 409 U.S. 1, 4 (1972) (per curiam) ("our national political parties first came into being as voluntary associations of individuals"); *see also* A. De Tocqueville, 2 *Democracy in America* 129 (Bradley, ed. 1954); D. Broder, *The Party's Over: The Failure of Politics in America* 172 (1971).

Parties 78 (1970) [hereinafter, *"California Politics"*]. At the turn of the century, Progressive Republicans, led by Hiram Johnson, set out to replace this prevailing laissez-faire regime with one ostensibly designed to democratize and purify the parties by rescuing them from the stranglehold of wealthy special interests.[7] *See Assembly Interim Committee on Elections and Reapportionment,* Report on Political Party Organization 7, *reprinted in* 1 Appendix to Journal of the Assembly (1963).

Spurred on by the Progressive reformers, the state legislature took the first—and most fundamental—step toward democratizing political parties by enacting a direct primary law, which transferred the power to nominate candidates from party organizations to the voters themselves. *See Hart v. Jordan,* 168 Cal. 321, 143 P. 537 (1914); *Katz v. Fitzgerald,* 152 Cal. 433, 93 P. 112 (1907); *see also California Politics, supra* at 35. As part of the same reform movement (*see* Opinion, Legislative Counsel of California, February 23, 1978, Excerpt of Record 465), the California legislature required political parties to

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[7] The most notorious special interest and the chief impetus to reform was the Southern Pacific Railroad Company, nicknamed "the Octopus" because of its allegedly ubiquitous corrupting influence on state government. *California Politics, supra* at 32. According to one commentator, the Southern Pacific "literally ran the state's politics." *Id.* at 31.

form state and county central committees and adopted rules for party governance.[8]

The Elections Code provisions regulating party governance are byzantine in their complexity[9] and vary in extent and detail from party to party. *See, e.g.*, Cal. Elec. Code §§ 8500-8945 (Democratic Party), 9000-9510 (Republican Party), 9600-9745 (American Independent Party), 9750-9855 (Peace and Freedom Party). To take the Democratic party as an illustration, the Code establishes party central committees at the county, *id.* § 8820, and state-wide levels, *id.* § 8660; it dictates the size, membership, and apportionment of these committes, *id.* §§ 8660-8672 (state committee), 8820-8834 (county committees); it mandates the place and time of committee meetings, *id.* §§ 8710-8711, 8920-8922; it enjoins the state central committee to observe standard parliamentary procedure, *id.* § 8778; and it provides for the election of a state chair and vice-chair and requires that they be selected alternately from the northern and southern sections of the state. *Id.* § 8774.

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[8] The political reforms that the Progressives wrote into California law during the first two decades of this century parallel laws adopted in other states. Between 1890 and 1920, most states adopted "elaborate legal codes closely regulating the state parties' internal affairs: the codes generally stipulated what committees and conventions the parties must have, the procedures by which their members are selected, who may participate in making the parties' decisions, and what powers, if any, each party organ has over the others." A. Ranney, *Curing the Mischief of Faction: Party Reform in America* 18 (1975). For a thorough catalogue of the reform measures implemented in the other states, see J. Starr, *The Legal Status of American Political Parties I*, 34 Amer. Pol. Sci. Rev. 439 (1940).

[9] *See* Friedman, *supra* at 71 (describing the laws governing the parties as "an illogical, disordered pattern").

Most importantly, the Elections Code assigns to each party's state central committee the "statutory function of party leadership" by placing it "at the very helm of the party's general election campaign." 23 Ops Cal. Atty. Gen. 119, 123 (1954); *see* Cal. Elec. Code §§ 8776, 8940.[10] Similarly, the Code provides that the county committees "shall have charge of the party campaign under general direction of the state central committee." *Id.* §§ 8940 (Democratic Party), 9440 (Republican Party), 9740 (American Independent Party), 9850 (Peace and Freedom Party). Hence, at least in theory, the central committees constitute the governing bodies of the parties.

In practice, commentators have noted that the statutory organization of the central committees is so cumbersome as to make only titular leadership realistically possible.[11] *See California Politics, supra* at 190-91. For example, the Democratic state central committee is composed of over 1,000 members — more than five times the size of the State Convention. *Id.* at 191. The membership in-

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[10] *See* Friedman, *supra* at 69 ("[i]n statutory contemplation California party organs have been left with one major role—to campaign for the general election success of the party nominees selected by the voters at the primary"); *see also* 23 Ops. Cal. Atty. Gen. 119, 121-23 (1954).

[11] The separate Elections Code provisions prescribing the membership of the Republican, American Independent, and Peace and Freedom central committees differ in some respects from the Democratic Party provisions. *See, e.g.*, Cal. Elec. Code §§ 9000-9510 (Republican Party). For instance, Elections Code § 8774 requires that the chairperson of the Democratic Party state central committee serve a single term to be fixed by party by-laws and that the chair alternate between residents of northern and southern California. Section 9274 duplicates the north-south rotation requirement of section 8774 but specifies a fixed term of two years for the Republican Party chair.

cludes all Democratic officeholders from Governor to members of the Congress and the state legislature. Cal. Elec. Code § 8660(a). Each state-wide officeholder,[12] United States Senator and state senator, appoints three other state committee members, "at least two of whom shall be of the opposite sex"; and each member of Congress and the State Assembly appoints two other members, "at least one of whom shall be of the opposite sex." *Id.* § 8663. Defeated party nominees for these offices also serve on the committee and appoint their share of additional members. *Id.* § 8661. Rounding out the membership are members elected by the county committees on a basis proportionate to registered party strength in each county, *id.* §§ 8660(b), 8667; five members elected by a caucus convened in each assembly district, *id.* § 8660(g) & 8669; and miscellaneous others.[13]

Thus, the legislative design favors elected officials over party members who do not hold elective office. The design particularly favors incumbent state legislators, who enact and amend the legislation. Members of the California State Assembly and Senate can control as many as 400 positions; in comparison, the California dele-

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[12] The state-wide officeholders are the Governor, the Lieutenant Governor, the Treasurer, the Controller, the Attorney General, the Secretary of State, and members of the State Board of Equalization. Cal. Elec. Code § 8660(a)(1)-(7).

[13] The miscellaneous state committee members include the following: (1) the national committeemen and national committeewomen of the party; (2) such immediate past party officers as are provided by party by-laws; (3) the President of the California Democratic Council and the President of the Federation of Young Democrats; and (4) former elected, nonjudicial officeholders. Cal. Elec. Code § 8660 *passim*.

gation to the United States Congress and Senate controls only 143 positions. *See* Cal. Elec. Code § 8660.

Finally, all party central committees have been prohibited from endorsing or opposing candidates in party primaries. Commentators have claimed that, like the cumbersome provisions dictating party governance, the ban on preprimary endorsements has weakened political parties, especially their ability to recruit and elect candidates who will further the party's goals.[14] *See* Friedman, *supra* at 70; *California Politics, supra* at 4; *see also* 23 Ops. Cal. Atty. Gen. 119, 122 (1954). Plaintiffs' uncontroverted affidavits show that by excluding the committes from the process of choosing party nominees, "a basic function of a political party [in our system]," *Kusper v. Pontikes*, 414 U.S. 51, 58 (1973), the state has effectively drained party central committees of political power. Although the legislature has charged the committees with the responsibility of running the general election campaigns of party nominees, in reality nominees run their own campaigns through ad hoc campaign committees. Supplemental Declaration of Austin Ranney; *see also California Politics, supra* at 199-200. Indeed, the California Attorney General has opined that the ban on preprimary endorsements reflects the progressives' "intent to minimize the

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[14] Partisan politics in California has been further inhibited by other provisions of the Elections Code. California has adopted non-partisan municipal elections, the initiative and referendum, and at one time allowed cross-filing, which permitted candidates with declared allegiance to one party to run simultaneously for the nomination of another party. Each of these Progressive-era innovations has curbed the ability of the party organization to shape the party's political agenda and support sympathetic candidates. *See California Politics* at 4 & 294-95; *cf.* Ranney, *Curing the Mischief of Faction, supra* at 17-19.

role of the established party agencies." 23 Ops. Cal. Atty. Gen. at 122. Overall, it has been observed that California's regulation of political parties has pushed them "out of much of their original domain." Friedman, *supra* at 69.

II

At the outset, we consider various threshold issues raised by the Secretary in her motion to dismiss below and renewed on appeal. The Secretary presents four reasons for reversing the district court without reaching the merits: (1) plaintiffs' complaint fails to raise a justiciable controversy; (2) plaintiffs lack standing to bring the action; (3) the action is barred by the Eleventh Amendment; and (4) the district court should have abstained under the *Pullman* doctrine from adjudicating the first and third causes of action. We find none of these arguments persuasive.

A

Article III limits the exercise of federal judicial power to actual cases and controversies. *NAACP v. City of Richmond,* 743 F.2d 1346, 1350 (9th Cir. 1984). A plaintiff who challenges a statute must demonstrate "a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement." *Babbitt v. United Farm Workers National Union,* 442 U.S. 289, 298 (1979); *see also O'Shea v. Littleton,* 414 U.S. 488, 494 (1974). But "[o]ne does not have to await the consummation of the threatened injury [to seek relief]. If the injury is certainly impending that is enough." *Babbitt,* 442 U.S. at 298 (quoting *Pennsylvania v. West Virginia,* 262 U.S. 553, 593 (1923)). When a plaintiff seeks to engage in conduct pro-

scribed by statute and a credible threat of prosecution exists, he need not "expose himself to actual arrest and prosecution to be entitled to challenge [the] statute . . . ." *Id.* (quoting *Steffel v. Thompson,* 415 U.S. 452, 459 (1974)); *see also Doe v. Bolton,* 410 U.S. 179, 188 (1973). This is especially true in a First Amendment case because of "the sensitive nature of constitutionally protected expression." *Dombrowski v. Pfister,* 380 U.S. 479, 486 (1965).

Relying on *Poe v. Ullman,* 367 U.S. 497 (1961), the Secretary claims that the action is not justiciable because the Elections Code provisions that plaintiffs challenge have never been enforced. In *Poe,* the Supreme Court held that a constitutional challenge to a Connecticut ban on contraceptives was not justiciable because the ban had never been enforced during its seventy-five year history, *id.* at 501, even though "contraceptives [were] commonly and notoriously sold in Connecticut drug stores." *Id.* at 502. This case, however, is distinguishable from *Poe* in that here we have no record that the relevant provisions have been "commonly and notoriously" violated. Indeed plaintiffs uncontroverted affidavits show that they have consistently, if reluctantly, obeyed the statutes in conducting party affairs.

Rather than *Poe,* we believe resolution of the justiciability issue is controlled by *Babbitt,* 442 U.S. at 302-03, and *Epperson v. Arkansas,* 393 U.S. 97, 101-02 (1968). In both cases, the Court found justiciability notwithstanding a record of non-enforcement because, as distinguished from

Poe, the record did not show that the statutes had been "commonly and notoriously" violated.[15]

The Secretary further contends that, under *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89 (1984), federal courts lack the authority to determine that a violation of a challenged state statute is a criminal offense unless the statute has already been enforced through a criminal prosecution.[16] She asserts that because federal courts cannot "instruct[] state officials on how to conform their conduct to state law," *id.* at 106, they are necessarily disabled from finding that a state statute requires criminal prosecution. We cannot accept this reading of *Pennhurst*. There the Supreme Court merely held that federal courts had no jurisdiction over an action to

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[15] The Secretary argues without authority that no case or controversy is raised by a challenge to an unenforced criminal statute unless that statute was recently enacted. The Secretary's argument is refuted by *Epperson*, where the Court held the statute justiciable despite its unenforced presence on the books for forty years. *See* 393 U.S. at 109 (Black, J., concurring). Indeed, the aftermath of *Poe* teaches that federal courts should not lightly determine that a statute has fallen into desuetude. The very statute the Court characterized as a dead letter in *Poe* was struck down in *Griswold v. Connecticut*, 381 U.S. 479 (1965), after the state prosecuted two persons, including a doctor, for openly counseling married persons on the use of contraceptives. We note that the Supreme Court did not cite *Poe* in either *Babbitt* or *Epperson*.

[16] Although the Secretary does not assert in her briefs that violations of these statutes are not criminal offenses, she notes in passing that the state's Chief Deputy Secretary of State and Chief Deputy Attorney General in their declarations take that position. We agree with Judge Patel that, in light of the plain statutory language of Cal. Elec. Code §§ 29102 & 29430, the state officials' apparent disavowal of any intention to enforce these laws is "anomalous." *San Francisco County Democratic Central Committee v. Eu*, No. C-83-5599, at 6 (Order filed May 3, 1984).

compel state officials to adhere to state law. *Pennhurst* does not undermine either explicitly or implicitly the settled rule that when a plaintiff is "one against whom the[] criminal statutes directly operate . . . a sufficiently direct threat of personal detriment" is alleged. *Bolton,* 410 U.S. at 188.

B

Closely related to the case or controversy requirement is the requirement that plaintiffs have standing to bring the action. *See Simon v. Eastern Kentucky Welfare Rights Organization,* 426 U.S. 26, 38 (1976). The Secretary argues that plaintiffs lack standing because they would not obtain effective relief from a judicial declaration that the statutes were unconstitutional. The premise of the Secretary's standing argument is that the party central committees have voluntarily adopted the statutory restrictions on preprimary endorsements and internal governance. Under these circumstances, she concludes, plaintiffs have no standing to seek an adjudication of the constitutionality of the statutes.

We reject the Secretary's standing argument. She has made no showing that the political parties have voluntarily adopted the statutory restrictions. Indeed, the uncontroverted affidavits of party representatives indicate the contrary: they would reform the composition of their parties' central committees if the statutes were invalidated. Moreover, all committee plaintiffs say they would make preprimary endorsements if the practice were not prohibited.

The Secretary's argument rests on the premise that legislative action can be equated with voluntary action by political parties. She asserts that:

> when the nominees of a party who are actually elected to the Legislature enact legislation affecting the organization and procedures of the party institutions the legislation is an act of self-governance by the party itself. Appellants presented evidence in the district court to support their motion for summary judgment and to oppose appellee's (sic) motion demonstrating that by custom and practice the political parties represented in the legislature accept each other's party legislation. Obviously, the legislators, who are inherently their party, are also exercising the legislative power of the state.

Appellants' Supplemental Brief Pursuant to Court Order Dated August 5, 1985, p. 3 [hereinafter, "Appellants' Supplemental Brief"].

The Secretary's astonishing argument collapses on its own terms. State legislators are not "inherently their party." Nor do legislative enactments that bind the parties and carry criminal penalties represent the parties' own voluntary action. The exercise of the coercive power of the state is the antithesis of voluntary action by political associations. Regardless of the motives of individual legislators or the quid pro quo arrangements that led to passage of the challenged statutes, the result remains the same: state regulation of political parties.

We hold that plaintiffs have standing to bring this action. To hold otherwise would be to allow the state legislature to endow the committees with "the statutory function of party leadership," 23 Ops. Cal. Atty. Gen. 119, 123 (1954), and place this leadership in the effective control of state legislators, *see California Politics* at 191, with-

out fear that their exercise of legislative power will be reviewed under the First Amendment.[17]

C

The Secretary next argues that plaintiffs' action is barred by the Eleventh Amendment. It is settled law, however, that the Eleventh Amendment does not bar an action seeking prospective relief from enforcement of an unconstitutional statute. *Ex parte Young,* 209 U.S. 123 (1908). Because plaintiffs do not seek damages, but only declaratory and injunctive relief, *Ex parte Young* is directly controlling. *See also Edelman v. Jordan,* 415 U.S. 651, 664 (1974).

D

Finally, relying on *Railroad Commission of Texas v. Pullman Co.,* 312 U.S. 496 (1941), the Secretary contends that the district court should have abstained from adjudicating plaintiffs' first and third counts pending the resolution of litigation in state court raising similar challenges to the Elections Code. In *Pullman,* the Supreme Court held that abstention may be appropriate "when difficult and unsettled questions of state law must be resolved be-

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[17] The Secretary also relies on *Marchioro v. Chaney,* 442 U.S. 191 (1979). In *Marchioro,* the plaintiffs contended that the policymaking body of a political party enjoys an absolute First Amendment exemption from state regulation. The Supreme Court rejected the claim without reaching the First Amendment issue by pointing out that state law did not require the central committee to perform any policymaking functions; those functions had been freely delegated to the central committee by the party itself. *Id.* at 198 & n.13; *see also* Weisburd, *Candidate-Making and the Constitution, supra* at 270 n.336. In this case, by contrast, state law compels ballot-qualified parties to adopt the statutory restrictions.

fore a substantial federal constitutional question can be decided." *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 236 (1984). *Pullman* abstention is inappropriate, however, "when a state statute is not 'fairly subject to an interpretation which will render unnecessary' adjudication of the federal constitutional question." *Id* (citation omitted); *see also Canton v. Spokane School District No. 81*, 498 F.2d 840, 845 (9th Cir. 1974).

Here, the Secretary does not advance an interpretation of the Elections Code that would moot the constitutional questions raised by plaintiffs. Nor could she. Section 11702 is clear on its face that central committees may not make preprimary endorsements, and other provisions prescribe in minute detail committee membership and limit the terms of committee chairs. Thus the district court's refusal to invoke *Pullman* abstention was not an abuse of discretion.[18] *See C-Y Development Co. v. City of Redlands*, 703 F.2d 375, 377 (9th Cir. 1983).

III

Before considering plaintiffs' claims that the Elections Code unjustifiably burdens their First Amendment rights, we address the Secretary's contention that the state and county central committees of California's ballot-qualified political parties have no First Amendment rights because

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[18] This court has a "virtually unflagging obligation" to exercise jurisdiction and may abstain only in exceptional circumstances. *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 817 (1976). This unflagging "'obligation is particularly weighty when those seeking a hearing in federal court are asserting . . . their right to relief under 42 U.S.C. § 1983.'" *Miofsky v. Superior Court of California*, 703 F.2d 332, 338 (9th Cir. 1983) (quoting *Tovar v. Billmeyer*, 609 F.2d 1291, 1293 (9th Cir. 1980)).

they are public entities, not private associations. The Secretary asserts that the legislature transformed the committees from voluntary political associations into public entities "integral [to] the state's election system," Appellants' Supplemental Brief, p. 15, when it dictated the committees' organization and powers and charged them with the responsibility of conducting the general election campaigns of party nominees. *Id.*, p. 13.

In essence, the Secretary argues that by regulating the committees, the legislature may deprive them of First Amendment rights. The Secretary's argument is flawed by "bootstrap reasoning." *Abrams v. Reno*, 452 F. Supp. 1166, 1170 (S.D.Fla. 1978) ("[w]ithout begging the question of the right of a political executive committee to exist and function without the breath of life provided by the election code, it seems to be bootstrap reasoning to suggest that election code regulation permits the denial of substantial constitutional rights"), *aff'd*, 649 F.2d 342 (5th Cir. 1981), *cert. denied*, 455 U.S. 1016 (1982). Even if the California Elections Code had expressly characterized the committees as public agencies,[19] we would reject the Secretary's premise that a state can strip a voluntary political

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[19] The status of these committees under the Elections Code is less clear than the Secretary would have us believe. The Secretary contends that under *Katz v. Fitzgerald*, 152 Cal. 433 (1907), "political parties shall be . . . regarded as public bodies whose methods are to be controlled by the state." *Id.* at 435. While the state's characterization of state political parties does not bind this court's determination of plaintiffs' First Amendment status, we note that the Secretary's characterization of the committees as public entities is belied by the refusal of both the California Supreme Court and the California Attorney General so to characterize them. *See Unger II*, 37 Cal. 3d at 615 (committees "are not agencies of the state for all purposes"); 59 Ops. Cal. Atty. Gen. 60, 61 (1976) (committees "are not public agen-

(Continued on following page)

association of First Amendment rights by legislating it into an arm of the state. In *Consolidated Edison Co. v. Public Service Commission*, 447 U.S. 530 (1980), for instance, the Supreme Court held that extensive regulation, however beneficial to the public, cannot deprive a utility of its status as a private entity entitled to constitutional rights. *Id.* at 533-34 & n.1. Likewise, in *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978), the Court repudiated the notion that the status of corporations as "creatures of the state" permits the state to prohibit corporate speech. *Id.* at 778 n.14. It follows *a fortiori* that the state cannot abridge the First Amendment rights of political associations by arguing that regulatory legislation makes them "creatures of the state."[20]

(Continued from previous page)

cies"); 23 Ops. Cal. Atty. Gen. 119, 120 (1954) (committees "are no more public agencies than were their counterparts in the pre-primary era"). Moreover, the contention that the committees are state agencies is somewhat incongruous because unlike the sovereign, party central committees are expected to serve party interests, not the interests of the public at large; specifically, they are charged by statute with the responsibility of running the general election campaigns of party nominees. *See*, e.g., Cal. Elec. Code §§ 8776 & 8940.

[20] The so-called "white primary" cases are not to the contrary. While the Secretary cites *Smith v. Allwright*, 321 U.S. 649, 664-65 (1944), for the proposition that political parties are "public bodies" because they are part of the state's machinery for choosing officials, that case held only that a state party's disenfranchisment of black party members in its primary election amounted to state action for purposes of the Fifteenth Amendment. In later cases, the Court has limited *Smith* to its unusual context: a state-mandated racially discriminatory primary scheme in a one-party state where nomination is tantamount to election. In both *Cousins v. Wigoda*, 419 U.S. 477 (1975), and *Democratic Party v. Wisconsin ex rel. La Follette*, 450 U.S. 107 (1981), the Court "appears to reject the argument that an activity is state action solely because it is integral to a state-created election process." Weisburd, *Candidate-Making and the Constitution, supra* at 239 (1984).

We recognize that California has extensively regulated political parties. The Secretary, however, turns constitutional analysis upside down when she argues that the state regulations are immune from constitutional attack because they deprive the party committees of First Amendment status. The question is not whether the committees lack First Amendment rights because of state regulation. Rather, the question is whether the challenged regulations must fall because they violate the committees' First Amendment rights. Turning to this question, we address the constitutionality of the provisions that regulate the structure and internal affairs of the party committees in Part III. In Part IV, we consider the constitutionality of the ban on preprimary endorsements.

IV

Our analysis of plaintiffs' constitutional claims begins with the fundamental premise that "a significant impairment of First Amendment rights must survive exacting scrutiny." *Elrod v. Burns*, 427 U.S. 347, 362 (1976) (plurality); *see also Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 294 (1981). If, as plaintiffs allege, the state regulations interfere with their rights to free association and free expression, the regulations can survive First Amendment scrutiny only if the Secretary shows that they are "necessary to serve a compelling interest." *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979); *see also Kusper v. Pontikes*, 414 U.S. 51, 58-59 (1973) ("even when pursuing a legitimate interest,

a State may not choose means that unnecessarily restrict constitutionally protected liberty''). [21]

We first consider whether the state's regulation of the selection of state committee members and the term of office of committee chairs burdens plaintiffs' First Amendment rights. We then consider whether the regulations serve compelling state interests. *See Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

A

''[T]he right of individuals to associate for the advancement of political beliefs'' is fundamental, *Williams v. Rhodes*, 393 U.S. 23, 30 (1968), and includes the ''freedom to identify the people who constitute the association, and to limit the association to those people only.'' *Wisconsin ex rel. La Follette*, 450 U.S. at 122. Because the right of

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[21] The Supreme Court has developed the following detailed methodology for deciding whether laws that impinge on associational freedoms violate the First Amendment:

> [A court] must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests; it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional. *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983); *see also Socialist Workers Party v. Secretary of State*, 765 F.2d 1417, 1418 (9th Cir. 1985). We do not construe *Anderson* as disturbing the settled rule that laws that restrict First Amendment freedoms must ''be demonstrably supported by not only a legitimate state interest, but a compelling one.'' *Brown v. Hartlage*, 456 U.S. 45, 53-54 (1982).

association would be hollow without a corollary right of self-governance, "there must be a right not only to form political associations but to organize and direct them in the way that will make them most effective." *Ripon Society Inc. v. National Republican Party*, 525 F.2d 567, 585 (D.C. Cir. 1975), *cert. denied*, 424 U.S. 933 (1976). Thus the party's freedom of association necessarily includes the right "to choose its own structure, select its own standard bearers, and formulate its own platform—all free from the intrusion of state regulation." *Republican Party v. Tashjian*, 770 F.2d 265, 281 (2d Cir. 1985); *see also Ripon Society Inc.*, 525 F.2d at 585 ("a party's choice, as among various ways of governing itself, of the one which seems best calculated to strengthen the party and advance its interests, deserves the *protection* of the Constitution. . . .") (emphasis in original).

It is readily apparent that the regulations burden the parties' right to govern themselves as they think best. By legislative fiat, the state vests party leadership in the central committees, determines the size of the committees, and apportions their membership according to a statutory formula. Whether this formula is or is not "best calculated to strengthen the party and advance its interests," *Ripon Society Inc.*, 525 F.2d at 585, is irrelevant to First Amendment analysis. It is the right of the party, not the state, to decide how the party shall be governed. *See id.*

In stacking the deck heavily in favor of elected officials and party nominees, the legislature has dictated to each ballot-qualified party an organizational structure that may not be the party's choice. For example, a party trying to adapt to changing conditions may have interests that differ from the interests of entrenched incumbents. Commentators

have noted that the pro-incumbent composition and unwieldy size of California's state central committees have made them "fairly rigid organization[s] incapable of adjusting and responding to changing conditions." *California Politics, supra* at 186.

The experience of the Libertarian party exemplifies the plight of a political party forced to operate under state-mandated rules of governance. When the Libertarian party qualified for the ballot, it was forced to jettison its "preferred and natural" party organization and replace it with one already mandated for one of the existing qualified parties.[22] *See* Declaration of Mary Gingell. After adopting the rules of the Peace and Freedom Party as the least objectionable interim model, the Libertarians drafted a body of rules specifically tailored to their party's distinctive needs. When presented to the legislature, the proposed rules languished and died in committee. *See id.* Thus, the Libertarian party has been compelled by the state to organize itself in a way considered inimical to its political interests. *Cf. Tashjian*, 770 F.2d at 283 & n.25.

Moreover, we believe that the challenged regulations directly interfere with the parties' free expression of inevitably coloring the message that the parties communicate to the electorate. *See Tashjian*, 770 F.2d at 282 ("in light of the intimate relationship between the structure of a political association and the message ultimately transmitted by that group, . . . the inexorable effect of [regulating the

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22 Parties that newly qualify for the ballot by demonstrating adequate electoral strength under Cal. Elec. Code § 6430 are required to conform their operations to the statutory blueprint prescribed for one of the existing ballot-qualified parties. *Id.* § 9995. The Libertarian party qualified in 1980. Declaration of Mary Gingell.

structure of political parties] is to alter the Party's message''). By favoring incumbents, the California legislature may give ballot-qualified parties a pro-incumbent image that impedes their associational goals.[23] For instance, a party's efforts to change political course may be frustrated by the incumbent bias inherent in its organizational structure. We do not intend to say that elected officials and party nominees are incapable of providing strong and effective leadership. What we do intend to say is that when the state restricts a party's freedom to choose its leadership, the state burdens the party's First Amendment rights.

The parties' associational right to choose their own leadership is also burdened by the single-term limit on committee chairs. In limiting committee chairpersons to one two-year term—regardless of their popularity and effectiveness—the legislature has impaired the parties' ability to commit their fortunes to experienced and successful leadership. As Judge Patel recognized below, parties are ''gravely weakened if the members are not permitted to make use of an able leader for a long enough period of time to ensure effective administration.'' *San Francisco County Central Committee v. Eu*, No. C-83-5599 at 20 (Order filed May 3, 1984).

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[23] Commentators have noted that mandatory organizational provisions damage a party's freedom to determine its own message. *See* Weisburd, *Candidate-Making and the Constitution*, *supra* at 260-61 (''requiring a particular form of party organization can prevent party adherents from attaining objectives inconsistent with that required form of organization''); *cf.* Note, *Primary Elections and the Collective Right of Freedom of Association*, 94 Yale. L. J. 117, 126 (1984) (''a political party's ability to define its boundaries cannot be separated from the party's ability to determine its political ideology'').

B

Having established that the challenged regulations burden plaintiffs' First Amendment rights, we turn to "the precise interests put forward by the State as justifications for the burden imposed by its rule." *Anderson,* 460 U.S. at 789.

The Secretary claims that the state has a compelling interest in sheltering the state central committees from the internecine strife of the primary elections so that the committees will be in a strong position to carry out their statutory responsibility of running the general election campaigns of party nominees. This interest in avoiding factionalism, the argument goes, justifies state interference with the associational rights of political parties and their adherents. The Secretary argues that vesting control of the state committees in elected officials and party nominees assures that the committees will be broadly representative and resistant to factionalism.

The Secretary also cites the state's professed interest in restraining factions as justification for limiting the terms of party chairs. She argues that when the term limitation is combined with the statutory requirement that chairs rotate between northern and southern California, friction between these distinct regional interests is minimized.

In sum, the Secretary maintains that the Election Code provisions regulating the membership of state central committees and limiting the terms of committee chairs serve the state's assertedly compelling interest in avoiding "splintered parties and unrestrained factionalism." *Storer v. Brown,* 415 U.S. 724, 736 (1974).

Even if the Secretary could demonstrate that the state's regulation of ballot-qualified parties served its as-

serted interest in minimizing party faction, we disagree that promoting harmony in political parties is a compelling state interest. We recognize that the state's responsibility to hold elections and certify the results gives rise to a legitimate state interest in regulating elections. Without question, the state may act to protect "the integrity of the electoral process." *Rosario v. Rockefeller,* 410 U.S. 752, 761 (1973). As the Supreme Court said in *Storer,* "as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." 415 U.S. at 730.

Because of its compelling interest in orderly elections, the state may restrict access to the ballot. *See Bullock v. Carter,* 405 U.S. 134, 145 (1972) (the state "has a legitimate interest in regulating the number of candidates on the ballot"). Toward this end, the state may require that candidates meet minimum standards to qualify for the ballot in order to keep "its ballots within manageable, understandable limits," *Lubin v. Panish,* 415 U.S. 709, 715 (1974), "avoid voter confusion, and assure that the winner is the choice of a majority . . . of those voting, without the expense and burden of runoff elections." *Bullock,* 405 U.S. at 145. For example, independent candidates may be required to present nominating petitions that demonstrate "a significant modicum of [electoral] support." *Jenness v. Fortson,* 403 U.S. 431, 442 (1971); *see also American Party of Texas v. White,* 415 U.S. 767, 782 (1974). The state may also require the payment of filing-fees to weed out spurious candidacies, *see Bullock,* 405 U.S. at 145, so long as the fees are not excessive or a bar to indigent candidates. *Lubin v. Panish,* 415 U.S. at 717-18. Further, the state may protect the integrity of its primary elections

by imposing a waiting period before voters can switch their registered party affiliation, *Rosario v. Rockefeller,* 410 U.S. 752 (1973), and before candidates registered with one party can renounce their affiliation to run as independent candidates. *Storer v. Brown,* 415 U.S. 724 (1974).

It is equally clear, however, that the state's interest in "the stability of its political system", *Storer,* 415 U.S. at 736, does not extend to regulations that effectively restrict the ballot to the major parties or that ensure that the major parties remain ballot-qualified. *Williams,* 393 U.S. at 32; *see also Illinois State Bd. of Elections v. Socialist Workers Party,* 440 U.S. 173, 185-86 (1979). As the Supreme Court noted in a related context, "care must be taken not to confuse the interest of partisan organizations with governmental interests." *Elrod,* 427 U.S. at 362. Thus, although the state's interest in orderly elections allows it to impose reasonable, non-discriminatory restrictions on ballot access, the state may not go to bat for political parties to assure that they remain ballot-qualified. In other words, the state has no interest in regulating political parties for the purpose of helping them win or retain voter support. Political parties are nothing more than voluntary associations of individuals who band together in pursuit of shared political goals. A party's survival depends upon its ability to compete in the free marketplace of political ideas and ideals. The First Amendment limits the state to a neutral role in that competitive process. The state may not interfere with the associational rights of political parties beyond what is necessary to assure honest and orderly elections.

The Secretary relies upon *Storer v. Brown* as support for her argument that the state may prescribe the composi-

tion of state central committees and limit the term of party chairs because of the state's asserted interest in assuring strong consensus leadership for the general election campaigns. We believe her reliance on *Storer* is misplaced.

In *Storer*, the Court upheld a California "sore loser" statute that required independent candidates for political office to disaffiliate from their former political party at least one year prior to the party primary. *Storer* recognizes that the state's legitimate interest in limiting access to the general election ballot entitles it to reserve that ballot for "major struggles," free of the destabilizing effect of "continuing intraparty feuds." *Storer*, 415 U.S. at 735; *see also American Party of Texas*, 415 U.S. at 781 (the state "may insist that intraparty competition be settled before the general election . . . ."). But critical to the *Storer* holding was that California's disaffiliation provision did not attempt to control intraparty feuding during the primary campaigns. To the contrary, the primary was recognized as the forum in which "contending forces within the party finally settle their differences." *Storer*, 415 U.S. at 735; *see also Anderson*, 460 U.S. at 803 (the *Storer* Court did not "suggest that a political party could invoke the powers of the State to assure monolithic control over its own members and supporters."). *Storer* does not stand for the proposition that the state has a compelling interest in perpetuating strong ballot-qualified parties. Nor does *Storer* authorize states to regulate political parties in an effort to keep them strong and conflict-free. In sum, the state has no legitimate interest in promoting the general-

ized goal of "compromise and political stability." *Williams*, 393 U.S. at 32.[24]

When we apply these principles to the California Elections Code, it becomes evident that the state's asserted interest in fostering party leadership does not derive from the state's legitimate interest in orderly elections. Weak and divided campaign leadership may result in defeat at the polls, but it does not threaten the state's interest in an orderly election process. The Secretary's argument confuses campaigns with elections, partisan interests with the interests of the state. We conclude, therefore, that regulations designed to give ballot-qualified parties effective campaign leadership do not rest on a compelling state interest.

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[24] Likewise, the Secretary's use of *Marchioro v. Chaney*, 442 U.S. 191 (1979), to support the challenged governance provisions outstrips the limited rationale of that case. In *Marchioro*, the State of Washington attempted to require that the state central committee be composed in a representative fashion. The authorizing statute empowered the central committee to perform certain limited duties, such as calling party conventions and filling vacancies on the party ticket. In addition, the charter of the Democratic Party delegated to the committee considerable responsibility in raising funds, recruiting candidates, and setting general policy. The plaintiffs, would-be committee members who were elected pursuant to a charter amendment that sought to supplement the membership stipulated by state law, sued to enjoin their exclusion based on the statute on the ground that a party policymaking body enjoyed a First Amendment exemption from state regulation. The Supreme Court dismissed the plaintiffs' claim without resolving the constitutionality of the Washington regulations. The Court noted that the party freely delegated the committee powers upon which the plaintiffs predicated their challenge; and plaintiffs did not oppose the committee's performance of its state-imposed duties. *Id.* at 197-98. Thus, the Court held that the source of the plaintiffs' grievance was the party's exercise of its right of self-governance, not state interferences with that right. *Id.* at 199.

C

Moreover, even if we assume that the state has a compelling interest in minimizing party faction, the Secretary has failed to carry her burden of showing "a substantially relevant correlation between the governmental interest asserted," *Pacific Gas & Electric Co. v. Public Utilities Commission of California,* 106 S.Ct. 903, 913 (1986), and the Elections Code sections regulating the selection of state committee members and the term of office of their chairs. We agree with Judge Patel that the Secretary failed to submit "a shred of evidence", *San Francisco County Central Committee v. Eu,* at 22, in support of her claim that unregulated parties would be more vulnerable to "the predations of faction." Defendant-Appellants' Supplemental Brief, p. 44. In opposing plaintiffs' summary judgment motion on the merits, the Secretary relied exclusively on the affidavit of retired Democratic state senator Albert S. Rodda, Jr., a long-time member of the Democratic state central committee. As Judge Patel observed, this affidavit consists of "opinions . . . not based on facts, but on speculations." *San Francisco County Central Committee v. Eu,* at 16. With respect to the provisions that regulate committee governance, Rodda makes the single conclusory statement that they "provide some protection against devices used by factions to exclude others from participation in party affairs." Affidavit of Albert S. Rodda, Jr.

The Rodda affidavit fails to controvert plaintiffs' declarations concerning the impact that the challenged Elections Code provisions have on political parties. Plaintiffs' declarations demonstrate that these provisions weaken rather than strengthen the leadership of ballot-qualified

parties. For example, the provisions regulating state committee membership stifle party debate by overrepresenting elected officials. Declarations of David E. Sturrock and Bert Coffey. Plaintiffs have also shown the difficulty of effecting a change in party leadership because party initiatives are left to the mercy of a slow-moving, possibly recalcitrant legislature. Declaration of Hugh Bone.

Finally, plaintiffs' declarations show that the state's extensive regulation of party leadership discourages able people from taking an active role in party organization and hinders a party's recruitment of new leaders. Declarations of Bert Coffey and Austin Ranney. Although the Secretary claims that the challenged regulations invigorate and democratize the parties, as the Progressives ostensibly set out to do, *see supra* at 7-8, the record demonstrates the opposite: in fact, the parties have become weak and fossilized. Thus, we conclude that the Secretary has failed to demonstrate that the state's regulations advance its professed interest in strong party leadership.[25]

V

Finally, we consider the constitutionality of California's outright ban on partisan preprimary endorse-

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[25] We find it ironic that the Secretary claims that the Progressives' reform of political parties strengthened party leadership when the Attorney General of California once rendered a formal opinion that the reforms reflect the Progressives' intent "to minimize the role of the established party agencies." 23 Ops. Cal. Atty. Gen. at 122.

ments, Cal. Elec. Code § 11702.[26] Because section 11702 prohibits political speech, the inviolability of which rests at the core of the First Amendment, *see, e.g., Buckley v. Valeo*, 424 U.S. 1, 14 (1976); *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971), we must subject the section to strict scrutiny. "[W]here . . . a prohibition is directed at speech itself, and the speech is intimately related to the process of governing, 'the State may prevail only upon showing a subordinating interest which is compelling.'" *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 786 (1978) (quoting *Bates v. Little Rock*, 361 U.S. 516, 524 (1960)). Moreover, " 'the burden is on the government to show the existence of such an interest.' " *Bellotti*, 435 U.S. at 786 (quoting *Elrod*, 427 U.S. at 362). Finally, "the state action may be sustained only if the government can show that the regulation is a precisely drawn means of serving" its interests. *Consolidated Edison Co. v. Public Service Commission*, 447 U.S. 530, 540 (1980).

The Secretary argues that the ban on preprimary endorsements serves three state interests that she claims to be compelling: (1) avoiding party factionalism; (2) protecting voters from the undue influence of party leaders; and (3) minimizing voter confusion. We will address each interest in turn.

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[26] Until recently, Florida was the only state other than California that forbade partisan preprimary endorsements. *See* Weisburd, *Candidate-Making and the Constitution, supra* at 271 n.343. The Florida statute was held to violate the First Amendment in *Adams v. Reno*, 452 F. Supp. 1166, 1170 (S.D.Fla. 1978), *aff'd* 649 F.2d 342 (5th Cir. 1981), *cert. denied*, 455 U.S. 1016 (1982).

A

The Secretary asserts that the ban on preprimary endorsements serves the state's interest in averting internal party dissension and factionalism. As we discussed above, the state's interest in regulating political parties derives from its role in conducting the primary and general elections and certifying election results. We held that the state has no interest in assuring that ballot-qualified parties remain strong and vigorous. We now hold similarly that the state's asserted interest in preserving party cohesion during primary election campaigns is not a compelling interest that could justify a prohibition on preprimary endorsements. Moreover, even if preserving party cohesion during primary campaigns were a compelling state interest, the Secretary has made no showing that banning preprimary endorsements sufficiently serves that interest to justify an outright prohibition on political speech.[27]

The Secretary again cites *Storer v. Brown*, 415 U.S. 724 (1974), for the proposition that the state has a compelling interest in preventing party committees from disintegrating into hostile factions during the primaries, thereby disabling them from running the general election campaigns of party nominees. According to the Secretary, section 11702 advances this interest by disembroiling the committees from the primary contest. Thus, the argu-

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[27] Thus, in our view, the only conceivable basis for justifying the ban on preprimary endorsements would be that the central committees possess no First Amendment rights because they are public entities. We have already rejected the Secretary's argument to that effect. *See* Part III, *supra*.

ment goes, opportunistic primary candidates have no reason to seize control of the party leadership. Likewise, the leadership's enforced neutrality among primary rivals encourages the preservation of party resources for the eventual party nominee.

The Secretary's reliance on *Storer* is misplaced. *Storer* recognized that the state's interest in limiting access to the general election ballot entitles it to prevent "sore losers" from running again as independent candidates. 415 U.S. at 734. Moreover, *Storer* viewed the primary as set apart for healthy intraparty confrontation, even bloodletting. *Id.* at 735. It offers no support for the Secretary's claim that the state has a compelling interest in fostering party cohesiveness during primaries.

Even if we assume that the state has such an interest, the Secretary made no showing that the ban on preprimary endorsements preserves party cohesion. Again, the only affidavit she submitted was the declaration of former state senator Rodda, and this affidavit consists of unsupported conjecture.

Plaintiffs' uncontroverted affidavits, on the other hand, bear out the following: First, section 11702 has eroded the parties' ability to identify, recruit, and promote "strong opposition candidates." Declaration of David E. Sturrock. In the void caused by silencing the committees' power of endorsement, each candidate forms an ad hoc committee to run his primary campaign and, if he is successful, that committee goes on to run the general election campaign independently of the party organization. The result of banning preprimary endorsements, according to the affidavit of Williams College political scientist

James MacGregor Burns, is that party control degenerates into a "personalistic system that caters to irresponsible political campaigning and public service." Thus, as Burns concludes, "taking away the endorsement power strikes at the very core of the party." *See also* Declaration of Eugene Lee ("[a] political party unable to endorse candidates is, by definition, a weak party"); *California Politics, supra* at 5 ("[C]alifornia campaigns are highly personalized extravaganzas').

Second, plaintiffs showed that in states that permit partisan primary endorsements, the practice is generally used in a selective, circumspect fashion so as not to endanger party unity. Several affiants experienced in the politics of other states testified that when no candidate has been the clear favorite of the party leadership, the leadership has either refrained from issuing controversial endorsements or endorsed several candidates in the same race. *See, e.g.* Declarations of Eugene Lee and James MacGregor Burns. Moreover, the ability to issue endorsements has helped party leadership distinguish candidates genuinely allied with the party from candidates who are essentially masquerading as party adherents. In California, conversely, the ban on preprimary endorsements has on occasion allowed hostile candidates to win the party nomination. For instance, in a much-publicized episode discussed in plaintiffs' affidavits, a grand dragon of the Klu Klux Klan campaigned for and won the 1980 Democratic party nomination for Congress in the San Diego area while the Democratic county central committee remained powerless to oppose him. Declaration of Edmond Constantini.

In sum, the Secretary has failed to show that section 11702 serves party cohesion. Thus, even if we considered party cohesion to be a compelling state interest, we would conclude that the Secretary has failed to show that the interest is furthered by banning preprimary endorsements.

B

The Secretary further claims that the ban on preprimary endorsements is justified by the state's interest in safeguarding the right of party adherents to choose primary candidates without undue influence from the party leadership. The Secretary thus attempts to justify the restraint on committee speech by arguing that the ban promotes the First Amendment rights of party rank and file. We must reject the argument that one person's First Amendment rights may be restricted in order to enhance the rights of another.

It is by now settled First Amendment law that the state may not "restrict the speech of some elements of our society in order to enhance the relative voice of others." *Buckley,* 424 U.S. at 48-49, *quoted in Bellotti,* 435 U.S. at 790-91; *see also Miami Herald Publishing Co. v. Tornillo,* 418 U.S. 241 (1974). In *Bellotti,* the state argued that curbing corporate speech in referenda elections furthered "the State's interest in sustaining the active role of the individual citizen in the electoral process." *Bellotti,* 435 U.S. at 787. The Supreme Court rejected this argument on the ground that the First Amendment does not tolerate discriminatory silencing measures designed to equalize political debate. Thus, *Bellotti* forecloses the Secretary's argument that the ban on preprimary endorsements is constitutionally acceptable because in the state's judg-

ment it yields an outcome favorable to free speech. *See also Pacific Gas & Electric v. Public Utilities Commission of California*, 106 S. Ct. 903 (1986).

With the exception of cases upholding laws carefully tailored to proscribe fraud and corruption, *see e.g., Buckley*, 424 U.S. at 26-27, the Secretary cites no authority for the proposition that the state can regulate the flow of information between political associations and their members. Prohibiting the governing body of a political party from supporting some candidates and opposing others patently infringes both the right of the party to express itself freely and the right of party members to an unrestricted flow of political information. *See Pacific Gas & Electric*, 106 S. Ct. at 907 ("The First Amendment protects the public's interest in receiving information"); *cf. Brown v. Hartladge*, 456 U.S. 45, 60 (1982) ("[by] *the free exchange of ideas* . . . the people are to choose . . . between candidates for political office") (emphasis added). We cannot accept the Secretary's claim that denying voters access to the views of party leadership somehow enhances their First Amendment rights.

In any case, we would reject "the 'highly paternalistic approach' of statutes like [section 11702] which restrict what the people may hear." *Bellotti*, 435 U.S. at 791 n.31 (quoting *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 770 (1976)). As *Bellotti* teaches, "the people in our democracy are entrusted with the responsibility for . . . evaluating the relative merits of conflicting arguments [and] the source and credibility of the advocate." 435 U.S. at 791-92; *cf. Police Department v. Mosely*, 408 U.S. 92, 95 (1972) ("gov-

ernment has no power to restrict expression because of its message, its ideas, its subject matter, or its content"). Plaintiffs' affidavits confirm what is implicit in the First Amendment: when the people are exposed to a public debate that is "uninhibited, robust, and wide-open," *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964), they are fully capable of thinking for themselves. Party endorsements are unrestricted in all other states, *see supra* at n.26; and plaintiffs' affidavits show that the electorate of these states typically considers the party's imprimatur as simply one relevant datum in the pool of information on rival candidates for the party nomination. Declarations of Donald Fraser, Malcolm Jewell, and Bert Coffey. Thus, the Secretary's fear that party members will blindly rubber-stamp the party's endorsement is speculation not borne out by either experience or common sense. California's ban on preprimary endorsements is a form of paternalism that is inconsistent with the First Amendment.

C

Finally, the Secretary attempts to justify the ban on preprimary endorsements on the ground that it minimizes voter confusion.[28] She asserts that voters might be con-

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[28] Legislative findings preceding § 11702 report "considerable public doubt and confusion" arising from the promulgation of deceptive endorsements. Cal. Elec. Code § 11701(3). The California courts that have enforced § 11702 have stated that minimizing voter confusion was the principal motive behind the enactment. *See People v. Crutcher*, 262 Cal. App. 2d 750, 752-53 (Cal. Ct. App. 1968); *California Democratic Council v. Arnebergh*, 233 Cal. App. 2d 425, 430 (Cal. Ct. App. 1965).

fused if they are not sheltered from the views of party leadership. The Secretary's apparent concern is that voters will be discouraged from participating in the primary election because they will view the party-endorsed candidate as the party's foreordained choice.

Again, we think that the Secretary has given voters too little credit. She has made no showing in support of her charge that voters will be confused by party endorsements. To the contrary, plaintiffs have made a showing that voters understand that endorsements are intended to counsel, not pre-empt their votes, and that the primary victor alone constitutes the general election candidate of the party. Analyzed properly, the asserted state interest in avoiding voter confusion collapses into a professed interest in ensuring that voters do not cast their primary ballots in unthinking obedience to party directives. On this score, we agree with the Second Circuit that "a state certainly does not have a compelling interest in shielding from confusion those voters who engage in unthinking and Pavlovian reliance on party labels." *Tashjian,* 770 F.2d at 284. Moreover, to the extent that the risk of confusion arises because the central committees carry the official imprimatur of the state, state legislation—not the inherent coerciveness of party endorsements—is the root of the problem.

California's asserted interests are insufficient to justify its ban on preprimary endorsements. Accordingly, we hold that section 11702 violates the First Amendment.

The judgment of the district court invalidating the provisions of the California Elections Code that regulate the selection of state central committee members, limit the term of office of committee chairs, and prohibit state and county central committees from endorsing, supporting, or opposing candidates in party primary elections is AFFIRMED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NO. C-83-5599-MHP

SAN FRANCISCO COUNTY
DEMOCRATIC CENTRAL
COMMITTEE, et al.,

Plaintiffs,

vs.

MARCH FONG EU, Secretary
of State of the State of
California, et al.,

Defendants.

ORDER

(Filed May 3, 1984)

Plaintiffs in this case are several Democratic and Republican county central committees and their chairs or vice-chairs, the state central committee of the Libertarian Party, an elected member of the San Francisco Board of Supervisors, and various individuals and groups active in party politics. Defendants are the Secretary of State and Attorney General of California and the district attorneys of several counties.[1] Plaintiffs in their first cause of action challenge certain provisions of the California Elections Code which prohibit state and county central committees from endorsing, supporting, or opposing candidates in direct party primary elections. In their second cause of action, they challenge provisions of the Elections Code and the California constitution which prohibit the committees from endorsing, supporting, or opposing candidates in county, city, and school elections. Finally, in

the third cause of action, they challenge provisions of the Elections Code which regulate the internal structure and organization of the political parties. Plaintiffs claim that the challenged provisions abridge their rights under the First and Fourteenth Amendments to the United States Constitution, as well as under 42 U.S.C. § 1983, and have moved for summary judgment on their claims. Defendants have moved to dismiss the claims on various grounds.

Oral argument was heard on the motions on April 9, 1984.[2] Having considered all memoranda, declarations, and exhibits submitted by the parties, and having heard oral argument, the court issued a brief order on April 16, 1984 outlining its rulings on the various issues. Due to the pressing nature of many of the issues presented, and in view of the upcoming primary elections, the court did not, in its April 16 order, discuss the basis for its rulings. The reasons for its decision were briefly explained from the bench and are more fully set forth herein.

Defendants' Motions to Dismiss

Defendants have moved to dismiss on four grounds: lack of standing; lack of a case or controversy; an Eleventh Amendment bar; and abstention. Each of these will be discussed separately.

1. *Standing*

Defendants' standing argument is without merit. The fact that in their moving papers they relegated the argument to a footnote and cited no authority suggests they may not consider it a serious argument. Plaintiff central committees are precisely the parties at which the challenged statutes are directed and they allege injury in their

capacity as organizations. It is simply not the law that an organization has no standing to bring an action if the challenged prohibition against its actions as an organization does not operate against its members as individuals. *E.g., Citizens Against Rent Control v. City of Berkeley,* 454 U.S. 290, 296 (1981) ("[t]o place a . . . limit . . . on individuals wishing to band together to advance their views on a ballot measure, while placing none on individuals acting alone, is clearly a restraint on the right of association"); *Buckley v. Valeo,* 424 U.S. 1, 15 (1976) ("[t]he First Amendment protects political association as well as political expression").

There is no authority for defendants' contention that the organizational plaintiffs are not "persons" within the meaning of Cal. Elec. Code §§ 29102 and 29304, and the court declines to adopt such a narrow interpretation. *See, e.g.,* Cal. Elec. Code § 3564.1 (in which "person" is accorded an expansive meaning). Plaintiff committees are also "persons" within the meaning of the Fourteenth Amendment and 42 U.S.C. § 1983, and have standing to bring suit under those provisions. *California Diversified Promotions, Inc. v. Musick,* 505 F.2d 278, 283 (9th Cir. 1974) (corporate plaintiff has standing under Fourteenth Amendment); *Collin v. Smith,* 447 F. Supp. 676, 682 (N.D. Ill. 1978), *aff'd,* 578 F.2d 1197 (7th Cir.), *cert. denied,* 439 U.S. 916 (1978) (political party has standing under Fourteenth Amendment); *Socialist Workers Party v. Hardy,* 480 F. Supp. 941, 942 & n.1 (E.D. La. 1977), *aff'd,* 607 F.2d 704 (5th Cir. 1979) (political party has standing under 42 U.S.C. § 1983).

Finally, defendants' reliance on *Simon v. Eastern Kentucky Welfare Rights Organization,* 426 U.S. 26 (1976)

is misplaced. Plaintiffs' interest is not an abstract one. They have clearly shown that the injuries they allege will be redressed if they prevail and obtain a decision invalidating the challenged provisions.

The court concludes that plaintiffs have standing to raise the issues in the complaint before this court.

2. *Eleventh Amendment*

Defendants attempt to argue that the court may not adjudicate the issues in this case because its jurisdiction is barred by the Eleventh Amendment. For this proposition they rely on the Supreme Court's recent opinion in *Pennhurst State School and Hospital v. Halderman*, — U.S. —, 104 S. Ct. 900 (1984). This contention is also without merit. *Pennhurst* involved the authority of a federal court to require a state to comply with its own law. The case before this court is premised on alleged violations of *federal* constitutional law. The Court in *Pennhurst* reaffirmed that the Eleventh Amendment does not bar a suit against a state official which is premised on a violation of federal constitutional rights. 104 S. Ct. at 910. *See, e.g., Steffel v. Thompson*, 415 U.S. 452 (1974) (plaintiff challenged state criminal trespass statute on federal constitutional grounds). The Eleventh Amendment poses no jurisdictional bar to this action.

3. *Case or controversy*

Defendants argue that this case is not justiciable due to lack of a case or controversy, in that the issues are not ripe for adjudication. In support of this argument, defendants have submitted declarations from the Chief Deputy Secretary of State of California, the Chief Deputy At-

torney General of California, and various county district attorneys and employees of those offices. These declarants state that to their knowledge the challenged statutes have never been enforced, and that in their view violation of the statutes would not constitute a criminal offense.

Cal. Elec. Code § 11702 provides:

> The state convention, state central committee, and the county central committee in each county are the official governing bodies of a party qualified to participate in the direct primary election. The state convention, state central committee, and the county central committee in each county shall not endorse, support, or oppose, any candidate for nomination by that party for partisan office in the direct primary election.

Cal. Elec. Code § 29430 provides:

> No candidate for nomination of a political party for a partisan office in the direct primary election shall claim, nor shall any other person claim on his behalf, that he or she is the official candidate or the officially endorsed candidate of such political party. A violation of this section by any person shall constitute a misdemeanor.

These two sections read together would, as a simple matter of statutory construction, indicate that endorsement of a candidate in a direct primary election by a state or county central committee constitutes a misdemeanor.

Moreover, Cal. Elec. Code §29102 provides that "[e]very person charged with the performance of any duty under the provisions of any law of this state relating to elections, who willfully neglects or refuses to perform it, or who, in his official capacity, knowingly and fraudulently

acts in contravention or violation of any of the provisions of such laws'' is punishable by fine or imprisonment, or both. This statute appears to cover any actions plaintiffs might take in contravention of the statutes challenged in the second and third causes of action, which prevent plaintiffs from endorsing candidates in non-partisan elections and mandate certain organizational structures and procedures.

In the face of such clear mandates by the legislature to enforce the election laws, defendants' disavowal of any intention of enforcing them strikes the court as anomalous. Defendants explain that the state has no interest in enforcement because the challenged provisions embody the policies of the political parties themselves. Whatever the impetus for adoption of the statutes by the legislature, the prohibitions and affirmative requirements are clearly stated and on their face apply to plaintiffs. This alone can be sufficient to confer standing on the parties against whom challenged provisions are directed. *Doe v. Bolton,* 410 U.S. 179, 188-89 (1973) (physicians had standing to challenge criminal abortion statute despite absence of threat of prosecution because they were the ''one[s] against whom these criminal statutes directly operated''); *Epperson v. Arkansas,* 393 U.S. 97 (1968) (teacher had standing to challenge state criminal statute prohibiting teaching of theory of evolution despite no record of prosecutions in forty-year history of statute).

In this case, plaintiffs have no clear assurance that they will suffer no criminal penalties if they engage in the prohibited conduct. While defendants' declarants state that they do not view an endorsement itself under § 11702 as constituting a criminal offense, they do not state that they

would refrain from enforcing §29430 against any central committee or member thereof who *used* such an endorsement in support of the candidate endorsed.[3] Obviously the purpose of an endorsement is not that it lies idly on the minute books. It is intended to be used by the party or candidate. Defendants have not said they would not enforce the criminal sanctions of §29430 against any person using the endorsement. Similarly, while defendants' declarants state that they do not view endorsement by plaintiffs of candidates for non-partisan offices or violation of the statutes governing the internal structure of plaintiff committees as constituting a criminal offense, plaintiffs have no guarantee that this interpretation would not change, particularly in view of the pressure that can be brought to bear in a highly charged political climate.

This is not a case in which the threat of enforcement is clearly lacking. It is not a case of an extremely old statute which has been openly flouted for years with no threat of enforcement, as was the case in *Poe v. Ullman,* 367 U.S. 497 (1961). There is no evidence in this case of violation of the challenged statutes since their inception.[4] Plaintiffs have submitted numerous declarations stating that they have in fact refrained from engaging in the desired political expression because of the statutes at issue. State and community political leaders should not have to become scofflaws in order to challenge the statutes.

In addition to the possibility that §29430 or §29102 will be enforced against plaintiffs who attempt to use an endorsement during a primary campaign, to endorse in non-partisan elections, or to structure their committees other than as required, there is no evidence before the court that defendants would not use their power to civilly

enforce the challenged provisions in the event of a violation. This prospect adds considerable weight to plaintiffs' contention that the controversy is ripe for adjudication. *See Babbitt v. United Farm Workers National Union,* 442 U.S. 289, 302 n.13 (1979) (the prospect of a civil cease-and-desist order or court-ordered injunction "provides substantial additional support for the conclusion that appellees' challenge . . . is justiciable"); *Seattle School District No. 1 v. Washington,* 633 F.2d 1338 (9th Cir. 1980) (plaintiff school districts had standing to challenge initiative which could be enforced only civilly.) Moreover, it is clear, and defendants' counsel conceded at oral argument, that the threat of a civil suit for an injunction by a disgruntled candidate or others is also a real possibility, were plaintiffs to endorse or otherwise violate the challenged provisions.[5]

It is important to emphasize that this case involves alleged violations of First Amendment freedoms of political speech and political association, freedoms which are among the most precious and jealously-guarded in our society. The declarations submitted by plaintiffs make clear that plaintiffs have refrained from exercising rights purported to be protected by the First Amendment, due to the existence of these statutes. This "chill" on the exercise of claimed constitutional rights clashes with the "profound national committment to the principle that debate on public issues should be uninhibited, robust, and wide-open. . . ." *New York Times Co. v. Sullivan,* 376 U.S. 254, 270 (1964). When First Amendment freedoms are at issue, it is even more important that those against whom restrictions are directly aimed, and who fear their enforcement, be given an opportunity to challenge them in court. *Cf. Johnson v. Stuart,* 702 F.2d 193, 195 (9th Cir. 1983) (in holding that

plaintiff, whose conduct was not regulated by the challenged restriction, lacked standing, court noted that plaintiffs in *Epperson* and other cases had been able to bring challenges on grounds of a chilling of free speech because the statutes challenged were aimed directly at them).

Moreover, this case arises in the unique context of the political arena. Political speech is the epitome of speech protected by the First Amendment. *See, e.g., First National Bank of Boston v. Bellotti,* 435 U.S. 765, 776-77 & n.12 (1978); *Buckley v. Valeo,* 424 U.S. at 14-15. Freedom of political association is no less fundamental. *Buckley,* 424 U.S. at 15. The same political context which makes these rights so precious also renders them vulnerable. The political climate, and a political office's unofficial interpretation of a statute, is subject to change, and assurances given today may be sacrificed tomorrow to political expediency. *See, e.g., People ex rel. Deukmejian,* 29 Cal. 3d 150, 154 (1981) (wherein the former state Attorney General had urged the Governor to sign into law the very statute the present Attorney General was attacking).

The bottom line is whether plaintiffs "have the 'personal stake in the outcome of the controversy' necessary to meet the requirements of Art. III." *Buckley v. Valeo,* 424 U.S. at 11, *quoting Baker v. Carr,* 369 U.S. 186, 204 (1962). The court is satisfied that there exists in this case a genuine case or controversy on each of plaintiffs' causes of action, and that the issues presented are not barred from adjudication on that ground.

4. *Abstention*

The final ground upon which defendants base their motion to dismiss is that the court should abstain from

deciding the issues presented by plaintiffs' second cause of action, concerning endorsements in non-partisan elections. The applicable test for abstention was enunciated by the Ninth Circuit in *Canton v. Spokane School District*, 498 F.2d 840, 845 (9th Cir. 1974), *quoting Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496, 498-99 (1941):

> (1) The complaint "touches a sensitive area of social policy upon which the federal courts ought not to enter unless no alternative to its adjudication is open."
>
> (2) "Such constitutional adjudication plainly can be avoided if a definitive ruling on the state issue would terminate the controversy."
>
> (3) The possibly determinitive issue of state law is doubtful.

Defendants' abstention argument is based on the existence of a case pending before the California Supreme Court in which the issue is whether the Republican State Central Committee is barred from endorsing the recall or "non-confirmation" of a state Supreme Court justice. *Unger v. Superior Court*, 145 Cal. App. 3d 50 (1983), *appeal docketed*, S.F. No. 24659 (Nov. 14, 1983) (*"Unger II"*). While plaintiffs argue that the only issue before the California Supreme Court is the viability of the ban on endorsements in *judicial* elections, the fact is inescapable that Art. II, Sec. 6 of the California constitution and Cal. Elec. Code § 37 do not differentiate between judicial, county, city, and school offices in prescribing that all are to be "non-partisan" offices. Were the California Supreme Court to decide that these sections do not prohibit endorsements in judicial elections, that decision would clearly have an im-

pact on the ability to endorse in the other categories of "non-partisan" elections. There is thus a very real possibility that the decision of the California Supreme Court in *Unger II*, based upon its interpretation of state law, could render unnecessary the constitutional adjudication in this court of plaintiffs' second cause of action. This satisfies the second prong of the Ninth Circuit abstention test.

The other prongs are also met. First, plaintiffs' challenge involves state laws regulating elections for state judges, state school officials, and city and county officials, all of which the state has decided should be non-partisan offices. This satisfies the requirement that the complaint "touch[] a sensitive area of [state] social policy." Second, the language of the challenged provisions is by no means unambiguous, and the opinion of the California Attorney General in 1976, concluding that endorsements by county central committees were not barred in non-partisan elections. 59 Ops. Cal. Atty Gen. 60 (1976), contrasted with the decision of the California court of appeals in *Unger v. Superior Court*, 102 Cal. App. 3d 681, *cert. denied*, 449 U.S. 1131 (1980) ("*Unger I*") (see n.4, *infra*), indicate that the issue is disputed at the highest levels of state government. This satisfies the third requirement that "[t]he possibly determinative issue of state law [be] doubtful."

For these reasons the court concludes that defendants' motion for abstention insofar as it relates to plaintiffs' second cause of action must be granted. This court shall, however, retain jurisdiction over the matter.

Defendants make an attempt to argue that abstention should also be granted as to the first and third causes of action. However, it is highly unlikely that the California

Supreme Court in *Unger II* will reach conclusions having any bearing on the issues in those two causes of action. The Ninth Circuit's test for abstention is not met as to the first and third causes of action. Therefore, defendants' motion for abstention insofar as it is directed at plaintiffs' first and third causes of action is denied.

Plaintiff's Motion for Summary Judgment

Plaintiffs have moved for summary judgment on all three causes of action. As the court has concluded it must abstain from adjudicating the issues presented in the second cause of action, it will consider the motion only insofar as it is directed at the first and third causes of action.

1. *First cause of action*

Plaintiffs in their first cause of action challenge sections of the California Elections Code which prohibits them from endorsing, supporting, or opposing candidates in direct primary elections. They claim the statutes infringe First Amendment freedoms of political expression and political association. The challenged provisions bar the plaintiff organizations from expressing their collective views on candidates for their party's nomination to political office. This is a clear limitation on political expression.

The Supreme Court has observed that "[o]ur form of government is built on the premise that every citizen shall have the right to engage in political expression and association," noting that this right is a vital part of the First Amendment. *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957). Organizations, including political parties, are entitled to the same protections when they desire to speak as

a collective unit. "Exercise of these basic freedoms [of political expressions and political association] . . . has traditionally been through the media of political associations." *Id. See also Buckley v. Valeo,* 424 U.S. at 15 (1976) (First and Fourteenth Amendments guarantee freedom to associate together to advance political beliefs); *Citizens Against Rent Control v. City of Berkeley,* 454 U.S. 290, 295-96 (1981) ("[t]he Court has acknowledged the importance of freedom of association in guaranteeing the right of people to make their voices heard on public issues;" in striking down challenged section, Court noted it "cannot be used to hobble the collective expressions of a group.")

The limitation on plaintiffs' political expression regarding candidates in direct primary elections is in the form of a total bar. Plaintiffs have demonstrated the effect of this in their declarations. There is no greater burden on the freedom of speech than an outright governmental prohibition of any kind of expression by the target group on a particular topic, as is the case here.

Plaintiffs have also shown a substantial burden on their freedom of political association. The Supreme Court in *Buckley v. Valeo,* 424 U.S. at 15, emphasized the importance of protecting political association:

> The First Amendment protects political association as well as political expression. The constitutional right of association explicated in *NAACP v. Alabama,* 357 U.S. 449, 460 (1958), stemmed from the Court's recognition that "[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association."

Where, as here, a state regulation significantly interferes with the fundamental freedoms of political expression

and political association, such interference will be sustained only if it is a narrowly-drawn means of implementing a compelling state interest. *Consolidated Edison Co. v. Public Service Commission,* 447 U.S. 530, 540 (1980)[6]; *First National Bank of Boston v. Bellotti,* 435 U.S. at 786; *Buckley v. Valeo,* 424 U.S. at 25. Moreover, " 'the burden is on the government to show the existence of such an interest.' " *Bellotti,* 435 U.S. at 786, *quoting Elrod v. Burns,* 427 U.S. 347, 362 (1976).

The state has totally failed to adduce any interest even approaching a "compelling" one.[7] In fact, even were the standard to be applied merely a "rational basis" test—which it clearly is not—defendants here would have failed to meet it on the basis of their submissions to this court.[8] In stark contrast to the more than two dozen declarations submitted by plaintiffs from individuals presently or formerly in positions of authority within the state and county central committees, individuals involved in party politics in other states, and professors of political science from all over the country, several of whom have specially studied the election process, defendants base their asserted "compelling state interest" on the speculations of one declarant, a former long-term California State Senator. Although he may be qualified to opine on the California political process, his opinions are not based on facts, but on speculations.

The state's asserted interest appears to be in "protecting the viability of a party's nominee and the coherence of its election process" and "safeguard[ing] the associational rights of those party members" who elected the party's nominees. Defendants' Opposition at pp.15

and 20. The theory behind this asserted interest is that if endorsements are permitted in direct primary elections, factions will develop within the official party organizations which will "preclude effective participation in party affairs and ignore the will of party members." *Id.* at p.18. Defendants conclude that permitting such endorsements by central committees would "disable" those committees from effectively conducting campaigns for the party's nominees in the general election. *Id.*

While defendants baldly assert that "[t]here can be no reasonable doubt" of this conclusion, *id.* at p.19, the *only* evidence proffered is the declaration of former State Senator Albert S. Rodda, Jr., whose "experience in party affairs convinces [him]" that such would be the case. Declaration of Albert S. Rodda, Jr. at p.3. Plaintiffs, however, have submitted the declarations of the Democratic Party chairpersons of the State of Washington and the City of Denver, and of the Mayor of Minneapolis, who state that party convention or central committee endorsements, or similar indications of support, are permitted of candidates for the party's nomination in their states. Plaintiffs have also submitted the declarations of professors of political science at Williams College and the University of Kentucky who have studied the election process and who note that political parties endorse primary candidates in other states, including Massachusetts, Connecticut, Rhode Island, North Dakota, New York, Illinois, Delaware, and Wisconsin. All of the declarants who addressed this issue, along with political science professors at the University of California at Berkeley and Georgetown University, agree, contrary to defendants' unsupported assertion, that allowing endorsements in primary

races strengthens a party. Defendants have made no showing whatsoever of any negative effects in states in which such endorsements are permitted.

Defendants have not demonstrated any burden on the associational rights of party members who directly elect the party's nominees in primary elections. They are apparently not asserting that such endorsements would have any coercive effect on party members; defendants agree that the endorsee of a central committee does not always win the party's nomination. Rather, defendants' argument that the state has a compelling interest in safeguarding the associational rights of party members is based on its perceived need to "provide party members themselves with the means of preserving some party organizations to carry out their will." Defendants' Opposition at p.18. This circular logic presupposes that permitting endorsements will in fact disable the central committee from effectively supporting the party's nominees, thus failing to "carry out [the] will" of the party members who chose those nominees. As already discussed, this assumption is entirely unsupported, and is effectively disproved by plaintiffs' declarations. Similarly, defendants' alleged interest in "protecting the viability of the party's nominee and the coherence of its election process" is premised upon the same unfounded assumption.

Defendants' reliance on *Storer v. Brown,* 415 U.S. 724 (1974) to support their assertion of a compelling state interest is misplaced. The Court in *Storer* upheld a California statute forbidding a place on the ballot to any independent candidate who had had a registered affiliation with a qualified political party within the year immed-

iately preceding the primary election. The Court noted that the issue involved was the integrity of the general election, which the state could properly protect from intraparty feuds; contending forces within a party could "settle their differences" during the primary campaign and primary election. *Id.* at 735. The holding in *Storer* supports defendants here only if, again, one accepts the assertion that allowing endorsements of candidates during the primary campaign would likely lead to intraparty feuds thereby disrupting the general election. That defendants have totally failed to support this assertion needs no further repetition.

As the above discussion has made clear, even granting defendants the benefit of all doubts, defendants have failed to set forth specific facts showing that there is a genuine issue for trial. There being no disputed issues of material fact, plaintiffs' motion for summary judgment as to the first cause of action is granted, the court finding that: § 11702 of the California Elections Code, on its face and as applied, is violative of the First Amendment to the United States Constitution as applied to the states through the Due Process Clause of the Fourteenth Amendment, as well as of 42 U.S.C. § 1983[9]; and further finding that § 29430 of the California Elections Code is violative of the First Amendment as well as of 42 U.S.C. § 1983.

Plaintiffs have amply demonstrated that they have met the requirements for injunctive relief. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). It is clear that plaintiffs have no adequate legal remedies, since money

damages cannot compensate for the loss of freedom of political speech and association. Plaintiffs are therefore entitled to the injunction already ordered by this court against enforcement of Cal. Elec. Code § 11702.

2. *Third cause of action*

In their third cause of action plaintiffs challenge sections of the California Elections Code which regulate the internal organization of the state and county central committee. The challenged provisions dictate the manner in which state central committee members are selected, limit the chairperson of the state central committee to one two-year term, regulate the time and place of meetings of the state and county central committees, and limit dues.

The court finds that plaintiffs have, through their declarations, demonstrated a substantial burden on their First Amendment freedom of association insofar as the state statutes regulate the selection of members and the term of the chairperson of the state central committee. Plaintiffs have submitted a declaration from a member of the Santa Clara County Republican Central Committee and Republican State Central Committee stating that the membership selection method mandated for the state central committee of the Republican Party provides that three-quarters of the members are nominees or their appointees, and only one-quarter are county central committee chairpersons, or their appointees, a minimal role disproportionate to the importance of the county central committees. Declaration of David Sturrock.[10] The term of office of the leaders selected by the membership is of a piece with the membership selection process itself. Plain-

tiffs have persuasively argued that the ability to control membership selection is gravely weakened if the members are not permitted to make use of the services of an able leader for a long enough period of time to ensure effective administration.

The Supreme Court has declared that the freedom to associate "necessarily presupposes the freedom to identify the people who constitute the association, and to limit the association to those people only." *Democratic Party of the United States v. Wisconsin ex rel. LaFollette,* 450 U.S. 107, 122 (1981). In that case, the Court was faced with the question whether the State of Wisconsin could insist that its delegation be seated at the Democratic National Convention in the face of the refusal of the Party, which found that the state's rule binding its delegates to vote in accord with the results of an open primary violated Party Rules. The Court resolved the issue in favor of the Party, opining that "a State, or a court, may not constitutionally substitute its own judgment for that of the Party. A political party's choice among the various ways of determining the makeup of a State's delegation to the party's national convention is protected by the Constitution." *Id.* at 123-24.

The Court in *LaFollette* relied in great part on *Cousins v. Wigoda,* 419 U.S. 477 (1975), a case involving similar principles, in which the Court concluded that the rules of the National Party were to be accorded primacy over state law in determining "the qualifications and eligibility of delegates to the Party's National Convention." *Id.* at 483 & n.4 The *LaFollette* Court also cited approvingly in a footnote to *Ripon Society, Inc. v. National Republican Party,* 525 F.2d 567 (D.C. Cir. 1975) (en banc), *cert. denied,* 424 U.S. 933 (1976). In *Ripon* the court upheld against a

constitutional challenge a delegate allocation formula adopted by the National Republican Party, concluding that "a party's choice, as among various ways of governing itself, of the one which seems best calculated to strengthen the party and advance its interests, deserves the *protection* of the Constitution . . . . [T]here must be a right not only to form political associations but to organize and direct them in the way that will make them most effective." *Id.* at 585 (emphasis in original).

These cases make clear that a party's selection of its governing bodies is protected by the First Amendment right of association. The right to select members is an inherently crucial right in the organization of any association, as recognized by the Supreme Court. The right to decide who will have leadership roles is clearly as important, and the court concludes that plaintiffs have made a sufficient showing that the restrictions on the terms of committee chairpersons substantially burdens their associational right to make decisions concerning their own leadership.

Defendants, again, have failed to show anything approaching a compelling state interest in these restrictions. They make the conclusory allegation, with no supporting evidence, that it "is immediately obvious" that "the challenged provisions are designed to protect party organizations . . . from the predations of faction." Defendants' Opposition at pp.21-22. They further conclude that without the restrictions on membership selection "unrepresentative faction[s] could and historically did gain control of official party organizations." *Id.* at p.22. There is not a shred of evidence to support this assertion. Moreover, even if defendants had shown this to be a compelling state interest,

they would still have failed to show that there are no less restrictive means of achieving the goal of assuring that a party organization not be co-opted by an unrepresentative faction. Again, plaintiffs have submitted declarations stating that political parties in other states are regulated less severely. Defendants have submitted nothing which would indicate that as a result the parties in those states are weakened, or the rights of members are infringed.

As to the restrictions on the method of member selection and the terms of committee chairpersons, the court concludes that plaintiffs have met their burden of showing a substantial infringement of protected First Amendment rights, and defendants have failed to show a compelling state interest, or to set forth specific facts showing there are disputed issues of material fact. Plaintiffs' motion for summary judgment on the third cause of action is therefore granted insofar as it relates to the provisions regulating member selection and terms of office of committee chairpersons. For the same reasons outlined in the preceding section, plaintiffs are also entitled to a preliminary injunction against enforcement of those sections, as ordered in the court's Order of April 16.[11]

Insofar as plaintiffs' third cause of action chalienges state regulations of the time and place of committee meetings and the amount of dues, the court finds that the declarations submitted by plaintiffs do not establish that the challenged sections place a substantial burden upon plaintiffs' freedom of speech or association. Although defendants' justifications are inadequate to sustain a compelling state interest, the court does not reach that until plaintiffs have shown the restrictions burden freedom of speech or association. Their declarations do not make that

showing. Plaintiffs' motion for summary judgment as to those sections is therefore denied, without prejudice to the filing of further declarations or submissions of other evidentiary material in support of a motion or at further proceedings.

Insofar as defendants have moved for summary judgment, the motion is denied, for the reasons explained above.

Dated: May 3, 1984

/s/ Marilyn Hall Patel
United States District Judge

FOOTNOTES

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[1] The district attorneys of Alameda, Santa Clara, and Solano counties have disclaimed any interest in this action.

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[2] The court attempted to accommodate defendants' complaints about the setting of these matters. One extension was granted for a short period of time. However, it should be noted this action was commenced on November 17, 1983. Defendants made no effort to move to dismiss until plaintiffs indicated their intention to move for summary judgment.

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[3] Defendants argue that the history of Cal. Elec. Code § 11702 indicates that plaintiff central committees would not be in violation of § 29430 by issuing slates stating their endorsements, citing *People v. Crutcher*, 262 Cal. App. 2d 750 (1968). However, it appears that the first sentence of present § 29430 was formerly the last sentence of § 11702, before the sections were revised in 1976. Legislative Committee Comment, 1976 Addition, to Cal. Elec. Code § 29430 (West 1977). A criminal penalty section was added at the time present § 29430 was enacted. Defendants have pointed to nothing in the history of the statutes which would indicate that § 29430 is inapplicable to the very section of which it formerly comprised a part.

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[4] The endorsement of candidates for non-partisan offices by county central committees prior to the decision in *Unger v. Superior Court*, 102 Cal. App. 3d 681, *cert. denied*, 449 U.S. 1131 (1980) (*"Unger I"*), holding that such endorsements were a violation of provisions making such offices non-partisan, is not to the contrary. Before the decision in *Unger I*, it was not believed that such endorsements rendered an election "partisan". *See* 59 Ops. Cal. Atty. Gen. 60 (1976).

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[5] The *Unger* cases provide a poignant example. Despite the Attorney General's opinion and nonenforcement, a private citizen, who was a candidate for a non-partisan school office, instituted two separate suits to enforce the statute. So far he has prevailed in both.

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[6] This case does not fit within the two other possible theories considered by the Court in *Consolidated Edison* by which a state might demonstrate that a restriction was constitutionally permissible. 447 U.S. at 535. The limitation here is not a time, place, or manner restriction; it is rather an outright ban. Nor is it a "permissible subject-matter regulation," which is a "narrow exception[] to the general prohibition against subject-matter distinctions" applied in certain cases involving the openness of a public facility. *Id.* at 539. Plaintiffs in this case are not attempting to gain access to a public facility.

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[7] The court notes that defendants' denial of any intent to enforce § 11702 also casts doubt on their assertion of a compelling interest in its continued existence.

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[8] The court feels compelled to comment on the quality of defendants' papers, which were almost totally lacking in substance. Instead, defendants resorted to hyperbole and unfounded accusations. To note a few examples, defendants accuse plaintiffs of employing a "subterfuge . . . to enlist the assistance of the court in their blatant power play" and of possessing "well-known meglomaniacal [sic] elitist tendencies." Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment and in Support of Defendants' Motions to Dismiss and for Summary Judgment ("Defendants' Opposition") at pp. 2 and 20. At p. 8 of the Memorandum is this paragraph:

> Plaintiffs' apparent contention that since renegade majorities (supposedly) of a few county central committees in recent years have, purportedly in the name of their party, endorsed candidates for nonpartisan office, it must be a legal and constitutional right bestowed on them as officials of the party is merely a recycling of the Watergate-type 'everybody has done it, therefore it must be right' boot-strap and question begging logic which masks a usurpation and abuse of power.

This accusation is not only inappropriate, it is incomprehensible. Defendants would have been better-advised to pay more attention to the substance of their legal argument, which was apparently sacrificed to intemperate rhetoric.

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[9] Having decided the issue on the basis of a violation of the First Amendment, the court does not reach plaintiffs' Equal Protection argument.

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[10] See also Declarations of Bert Coffey and Edmond Constantini, discussing the same problem in the previously mandated method of selection for members of the Democratic State Central Committee, which was changed only after a hard-fought twenty-year battle with the legislature. Declarants state that in 1983 a bill was introduced without consultation with the Party, proposing a reversion to the previous, discarded system of member selection.

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[11] Having decided the issue on the basis of a violation of the First Amendment, the court does not reach plaintiffs' Equal Protection argument.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599 MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, et al.,

Defendants.

ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT, DENYING DEFENDANTS' MOTION TO DISMISS, DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, STAYING PROCEEDINGS AS TO SECOND CAUSE OF ACTION, AND DIRECTING ENTRY OF FINAL JUDGMENT

(Filed April 16, 1984)

This matter having come before the court on plaintiffs' motion for summary judgment on all three causes of action stated in plaintiffs' First Amended Complaint, on defendants' motion to dismiss plaintiffs' First Amended Complaint, and on defendants' motion for summary judgment;

This matter having been fully briefed and argued by the parties;

The parties having had an opportunity to submit to the court factual material in support of their respective positions and no further extension having been sought for additional submissions;

The court having carefully reviewed the record in this matter, and having considered all the arguments;

It appearing that as to plaintiffs' motion regarding sections 8660, 8661, 8663, 8664, 8665, 8667, 8669, 9160, 9160.5, 9161, 9161.5, 9162, 9163, 9164, 9274, 9816, 11702, 29102, and 29430 of the California Elections Code, no genuine issue exists as to any material fact and that the plaintiffs are entitled to judgment as a matter of law; and

Good cause appearing therefor and for the reasons stated by the court from the bench and to be set forth more fully by written decision to be rendered hereafter;

IT IS HEREBY ORDERED that plaintiffs' motion for summary judgment as to the first cause of action is hereby granted in its entirety, and that:

(a) Section 11702 of the California Elections Code, on its face and as applied, is hereby declared violative of the First Amendment to the United States Constitution as applied to the states through the Due Process Clause of the Fourteenth Amendment, as well as of 42 U.S.C. section 1983;

(b) Section 29430 of the California Elections Code is hereby declared violative of the First Amendment to the United States Constitution as applied to the states through the Due Process Clause of the Fourteenth Amendment, as well as of 42 U.S.C. section 1983; and

(c) Defendants and their officers, agents, servants, employees, and attorneys and other persons acting in concert or participation with defendants are hereby permanently restrained and enjoined from

enforcing or seeking to enforce section 11702 of the California Elections Code;

IT IS FURTHER ORDERED, as to the second cause of action, that:

(a) All proceedings in this action regarding plaintiffs' second cause of action are hereby stayed until such time as the California Supreme Court shall issue an order, judgment, or opinion in the case of *Unger v. Superior Court,* No. 24659 (hearing granted November 14, 1983), presently pending before the California Supreme Court; and

(b) This court shall retain jurisdiction over this matter;

IT IS FURTHER ORDERED that plaintiffs' motion for summary judgment as to the third cause of action is hereby granted in part, and that:

(a) California Elections Code sections 8660, 8661, 8663, 8664, 8665, 8667, 8669, 9160, 9160.5, 9161, 9161.5, 9162, 9163, and 9164, relating to selection of State Central Committee members, and sections 9274 and 9816, relating to the terms of State Central Committee chairs, on their face and as applied, are hereby declared violative of the First Amendment to the United States Constitution as applied to the states through the Due Process Clause of the Fourteenth Amendment, as well as of 42 U.S.C. section 1983; and

(b) Section 29102 of the California Elections Code, as applied to those who violate the sections enumerated in subparagraph a of this paragraph, is

hereby declared violative of the First Amendment to the United States Constitution as applied to the states through the Due Process Clause of the Fourteenth Amendment, as well as of 42 U.S.C. section 1983; and

(c) Defendants and their officers, agents, servants, employees, and attorneys and other persons acting in concert or participation with defendants are hereby permanently restrained and enjoined from enforcing or seeking to enforce the sections enumerated in subparagraph a of this paragraph;

IT IS FURTHER ORDERED that:

(a) Plaintiffs' motion for summary judgment as to sections 8710, 8920, 8921, 9210, 9420, 9421, 9800, 9830, 9840, and 9841 of the California Elections Code, relating to the time and place requirements of State Central Committee meetings and County Central Committee meetings, is hereby denied; and that

(b) This denial is without prejudice to the filing of further declarations or submissions of other evidentiary material in support of a motion or at further proceedings;

IT IS FURTHER ORDERED that:

(a) Plaintiffs' motion for summary judgment as to sections 9275, 9818, and 9855 of the California Elections Code, relating to the $24 dues limitation, is hereby denied, notwithstanding the court's tentative ruling from the bench, the court having determined upon closer review of the declara-

tions submitted in support of plaintiffs' motion that the allegations with respect to the dues limitation do not establish that the challenged sections place a substantial burden upon plaintiffs' freedom of speech or assocation; and that

(b) This denial is without prejudice to the filing of further declarations or submissions of other evidentiary material in support of a motion or at further proceedings;

IT IS FURTHER ORDERED that defendants' motions to dismiss as to the first and third causes of action and for summary judgment as to all causes of action are hereby denied in their entirety;

IT IS FURTHER ORDERED that pursuant to Rule 54(b), Fed. R. Civ. P., this court hereby expressly determines that there is no just reason for delay of entry of final appealable judgments for plaintiffs as to the first cause of action and those portions of the third cause of action enumerated above, and hereby expressly directs the Clerk of the Court to enter this forthwith as final judgment for plaintiffs as to the first cause of action and the third cause of action insofar as summary judgment is granted; and

IT IS FURTHER ORDERED that defendants' motion to stay this order is hereby denied.

IT IS SO ORDERED.

DATED: April 16, 1984.

/s/ Marilyn Hall Patel
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599 MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, et al.,

Defendants.

JUDGMENT

Fed. R. Civ. P. 54(b)
(Partial)

(Filed April 16, 1984)

This action having come before this Court, the Honorable Marilyn Hall Patel, United States District Judge presiding, and the issues having been duly presented and a decision and order having been duly filed herein,

IT IS ORDERED AND ADJUDGED that plaintiffs' motion for summary judgment as to the first cause of action is granted and that plaintiffs' motion for summary judgment as to the third cause of action is granted in part as more specifically set forth in the accompanying order.

IT IS FURTHER ORDERED that defendants' motion to dismiss and/or for summary judgment as to the first and third causes of action is denied.

IT IS FURTHER ORDERED AND ADJUDGED that there being no just reason for delay, judgment shall be entered pursuant to Rule 54(b).

DATED: April 16, 1984.

/s/ Marilyn Hall Patel
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NO. C-83-5599-MHP

SAN FRANCISCO COUNTY
DEMOCRATIC CENTRAL
COMMITTEE, et al.,

Plaintiffs,

vs.

MARCH FONG EU, Secretary
of State of the State of
California, et al.,

Defendants.

ORDER FOLLOWING
REMAND

(Filed June 1, 1984)

This matter is here on remand on appellants' challenge to declarations of certain central committee appellees. The court has carefully reviewed the record before it and is not certain to what challenge the learned appellate court refers.

There appear to be three possible points in the record that could be interpreted as a challenge to the declarations or the authority of plaintiffs to bring the action, assuming a liberal interpretation of the term "challenge." One is a footnote in defendants' motion to dismiss. Since defendants did not see fit to incorporate this contention into the text perhaps the court did not give it the attention it gave other arguments contained in the body of the memorandum. "If the thought is important enough to deserve a place in the brief it can usually be fitted into the text." H. Weihofen, *Legal Writing Style*, Ch. 12, at 290 (2d ed. 1980). The footnote merely questions whether the committees have authorized the action and refers to matters necessarily outside the

pleadings. The court must assume for the purposes of a motion to dismiss that the allegations in the complaint are true. *See generally Conley v. Gibson,* 355 U.S. 41, 45-46 (1957).

Furthermore, defendants failed to comply with Rule 9(a), Fed. R. Civ. P., which requires a party raising capacity of any party to sue to do so by specific negative averment. This Circuit has held that a general denial or allegation on information and belief is insufficient to raise the issue and constitutes a waiver. *Summers v. Interstate Tractor and Equipment Co.,* 466 F.2d 42 (9th Cir. 1972); *Marks v. Brucker,* 434 F.2d 897 (9th Cir. 1970). *See also Ralston Oil and Gas Co. v. Gensco, Inc.,* 706 F.2d 685, 692 (5th Cir. 1983); *Garbincius v. Boston Edison Co.,* 621 F.2d 1171, 1174 (1st Cir. 1980). The State defendants filed their answer on December 16, 1983, several months before the motion to dismiss. No specific negative averments were made in the answer and defendants are properly deemed to have waived the issue. Despite the fact that defendants had not properly raised the issue, six of the eight central committee plaintiffs filed declarations on April 6.[1] Two others filed declarations after the hearing. These declarations stated their authority to bring the suit and the manner in which it was given.

Returning to the record and determining wherein the claimed issue was raised, the "challenge" appears nowhere in defendants' summary judgment papers. The only reference to authority to bring suit actually made in the summary judgment papers is in attorney Graybill's declaration. The declaration makes reference to certain representations regarding the Republican and Democratic State Central Committees. However, neither of them are parties to this action.

Finally, in the April 9, 1984 transcript of the oral argument, reference was made to declarations establishing authorization to bring suit. The court asked defendants' counsel if he was questioning the veracity of those declarations. He did not answer that question, but said he had not seen the declarations. The court issued its tentative ruling from the bench on April 9, 1984, a short form order on April 16, 1984, and its written decision on May 3, 1984. At no time in these proceedings or between the tentative ruling and the written decision did defendants challenge the veracity of the declarations which were made under penalty of perjury or submit any evidence to the court contradicting them. Nor did they seek leave for such purpose.

Giving a liberal interpretation to appellants' claim that certain issues were raised in this lower court and assuming the April 9 argument is the challenge referred to in the remand order, the court makes the following findings, conclusions and clarification.

First of all, the court found it was "not persuaded by any standing challenge" made by defendants. (R.T. 52:17-19). Implicit therein is the conclusion that the parties had authorization.[2]

Furthermore, the court has before it uncontroverted declarations under penalty of perjury from each of the eight central committee plaintiffs stating authorization has been given and the method by which it was given. The court is not prepared to assume that the eight officers lied under penalty of perjury nor is there any basis for disregarding the declarations. There being no facts in evidence controverting the declarations, the court finds that the plaintiff central committees and each of them have authorization and capacity to bring and maintain this litigation.

As to whether appellees have authority to bring an appeal, this court will not intrude upon the province of the appellate court to make that determination.

IT IS SO ORDERED.

Dated: 1-Jun 1984

/s/ Marilyn Hall Patel
United States District Judge

FOOTNOTE

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[1] This may have been the result of the footnote or some informal request. The remand order makes reference to appellants' seeking discovery. The record before this court reveals no requests pursuant to Fed. R. Civ. P. 34 or any other discovery provisions under the Federal Rules of Civil Procedure. Nor was any motion to compel brought pursuant to Rule 37. Once again, defendants chose to raise this issue, if at all, in the footnote.

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[2] Of course, capacity to sue is not the same as standing. It is not jurisdictional and it may be waived. The court further notes that there are a number of parties to this litigation whose authorization is not in question and who have been held to have standing in this court's May 3 order.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 84-1851
DC NO. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVID E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; and NATIONAL COMMITTEE FOR PARTY RENEWAL,

Plaintiffs-Appellees,

v.

MARCH FONG EU, Secretary of State of the State of California; JOHN VAN DE KAMP, Attorney General of the State of California; ARLO SMITH, District Attorney of San Francisco County, et al.,

Defendants-Appellants.

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

(Filed August 14, 1986)

Notice is hereby given that defendants-appellants, March Fong Eu, Secretary of State of the State of Cali-

fornia, John K. Van de Kamp, Attorney General of the State of California, Arlo Smith, District Attorney of the City and County of San Francisco, and Leo Himmelsbach, District Attorney of the County of Santa Clara hereby appeal to the Supreme Court of the United States from the final judgment of the U.S. Court of Appeal for the Ninth Circuit entered on June 18, 1986 affirming summary judgment against defendants entered by the U.S. District Court of the Northern District of California.

This appeal is taken pursuant to 28 U.S.C. § 1254(2).

DATED: August 13, 1986.

JOHN K. VAN DE KAMP
Attorney General

N. EUGENE HILL
Assistant Attorney General

PAUL H. DOBSON, Supervising
Deputy Attorney General

/s/ GEOFFREY L. GRAYBILL
Deputy Attorney General

Post Office Box 944255
1515 "K" Street, Suite 511
Sacramento, CA. 94244-2550
(916) 324-5465

DECLARATION OF SERVICE BY MAIL

Case Name: SFDCC v. Eu No.: 84-1851

I declare

I am employed in the County of Sacramento, California. I am 18 years of age or older and not a party to the within entitled cause; my business address is 1515 K Street, Suite 511, Sacramento, California 95814.

On August 13, 1986, I served the attached

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

in said cause, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California, addressed as follows:

Cedric C. Chao
MORRISON & FOERSTER
345 California Street
San Francisco, CA. 94104-2105

I declare under penalty of perjury the foregoing is true and correct, and that this declaration was executed at Sacramento, California, on August 13, 1986.

BARBARA PAYNE /s/ Barbara Payne
(Typed Name) (Signature)
DSM-1

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 84-1851
DC NO. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiff-Appellees,

v.

MARCH FONG EU, Secretary of the State of California, et al.,

Defendant-Appellants.

ORDER

(Filed August 14, 1986)

BEFORE: NORRIS, Circuit Judge:

Upon due consideration of Appellants' motion for continuance of a stay of the mandate of this Court in the above cause pending the filing of an appeal to the United States Supreme Court, such appeal to be filed on or before September 16, 1986,

IT IS ORDERED that the motion for continuance be GRANTED.*

DATED: 8/12/86

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* In the event that the appeal is timely filed, "the stay shall continue until final disposition by the Supreme Court." Fed. R. App. P. 41(b).

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-1851
DC No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiff-Appellees,

v.

MARCH FONG EU, Secretary of the State of California, et al.,

Defendant-Appellants.

ORDER

(Filed November 29, 1985)

Before: WRIGHT, SKOPIL, and NORRIS, Circuit Judges

All supplemental briefs and reply briefs having been received, this case is resubmitted.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-1851
DC No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiff-Appellees,

v.

MARCH FONG EU, Secretary of the State of California, et al.,

Defendant-Appellants.

ORDER

(Filed August 5, 1985)

Appeal from the District Court for the Northern District of California

Hon. Marilyn Hall Patel, U.S. District Judge, Presiding
Before: WRIGHT, SKOPIL and NORRIS,
Circuit Judges.

Because of the difficult issues presented by this case, we order the parties to file supplemental briefs directed to the following issues.

1. Are the state and county central committees private associations entitled to the full protections of the First and Fourteenth Amendments of the United States Constitution?

2. Is California's regulation of the composition of state central committees and the term of committee chairpersons in violation of the First and Fourteenth Amendments?

3. If the court affirms the district court's invalidation of the statutes challenged in the third cause

of action, should the court consider additional remedies to assure the orderly transition from a regulated to an unregulated system of selection.

Appellants should file their brief within 20 days of the date on which this order is filed. Appellees shall file a responsive brief within 15 days thereafter. The briefs shall be no longer than 30 pages in length.

This case is ordered vacated from submission. The case will be resubmitted when both briefs are filed without further order from this court.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-1851
DC# 83-5599 MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, SAN FRANCISCO COUNTY REPUBLIAN CENTRAL COMMITTEE, LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.

Plaintiffs-Appellees,

vs.

MARCH FONG EU, Secretary of the State of California, JOHN VAN DE KAMP, Attorney General of the State of California, ARLO SMITH, District Attorney of San Francisco County, et al.,

Defendants-Appellants.

ORDER

(Filed June 18, 1984)

BEFORE: WRIGHT, SKOPIL and NORRIS, Circuit Judges.

The appellants may, if they desire, file supplemental briefs with this court concerning the authority of the appellees to bring this action and appeal. If they brief this issue, such briefs shall be filed within ten (10) days of the date of this order. Appellees will then have ten (10) days to file a responsive brief. All briefs shall be limited to discussion of this issue and no brief shall exceed ten (10) pages in length.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-1851
DC# CV-83-5599 MHP
Northern California

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiffs-Appellees,

vs.

MARCH FONG EU, etc., et al.,

Defendants-Appellants.

ORDER

(Filed May 25, 1984)

Before: WRIGHT, SKOPIL and NORRIS, Circuit Judges

This appeal was argued and submitted on May 15, 1984. Among the issues raised, appellants challenged the declarations of the central committee appellees, who asserted they were authorized to bring this action. In support of this challenge, appellants sought discovery of committee bylaws and minutes, which were not provided by appellees.

The district court neglected to rule on this challenge. We remand to that court to make findings of fact and conclusions of law with respect to the authority of appellees to bring the action and appeal.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 84-1851
DC# CV-83-5599 MHP
Northern California

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiffs-Appellees,

vs.

MARCH FONG EU, Secretary of State of the State of California, et al.,

Defendants-Appellants.

ORDER GRANTING EMERGENCY MOTION FOR STAY

(Filed April 24, 1984)

Before: WRIGHT, SKOPIL and NORRIS
Circuit Judges.

The court has considered the appellants' Emergency Motion for Stay on Appeal and the supporting material, together with Appellees' Memorandum in Opposition. The motion seeks a stay of the judgment of April 16, 1984, as to which a notice of appeal was filed on that date.

IT IS ORDERED that the motion is granted and the judgment is stayed until further order of this court. The appeal is expedited. Oral argument on the merits will be heard at 1:30 p.m. on Tuesday, May 15, 1984, in San Francisco.

Any supplemental briefs will be filed with the clerk by Tuesday, May 8, 1984.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

P. O. Box 547
San Francisco, CA 94101
Court Of Appeals Docket Number
84-1851
(if known)

CIVIL APPEALS
DOCKETING STATEMENT

Case Name: S.F. County Democratic Central Committee, et al. v. March Fong Eu, et al.

District Court or Agency: U.S. District Court for the Northern District of Calif.

District Court/Agency Docket No.: C-83-5599 District Judge: Marilyn Hall Patel

Party or Parties filing appeal/petition: Defendants March Fong Eu, John K. Van de Kamp, Arlo Smith, and Leo Himmelsbach

A. *Timeliness of Appeal or Petition for Enforcement or Review*

(1) Date of entry of judgment or order appealed from: April 16, 1984

(2) Date notice of appeal or petition filed: April 16, 1984

(3) Authority fixing time limit for filing notice of appeal or petition:

Fed. R. App. P. 4(a)(1) .....x.....

Fed. R. App. P. 4(a)(4) .....

Fed. R. App. P. 4(a)(3); .....

Fed. R. App. P. 4(a)(5); .....

Service date of any motion
listed in

Fed. R. App. P. 4(a)(4): .....
Other (specify) .....

(4) Time limit for filing notice of appeal or petition: 30 days from entry of judgment.

B. *Appeal From District Court*

(1) Is the order appealed from a final order (i.e., does it dispose of the *action* as to *all claims* by *all parties)?* ..... No. .....

(2) If the order is not a final disposition, did the district court direct the entry of judgment in accordance with Fed. R. Civ. P. 54(b)?

..... Yes. .....

(3) If not final, is the order properly appealable as an injunction under 28 U.S.C. § 1292(a)(1)?

..... Yes. .....

(4) If none of the above applies, what is the basis for seeking appellate review? .....

C. *Review of Agency Decision*

If the appeal is from an agency decision, what statute or other authority grants this court power to review that decision? .....

D. *Nature of Disposition Below:*

( ) Bench Trial
( ) Jury Verdict
(xx) Summary Judgment
( ) Agency Order
( ) Default Judgment
( ) Grant/Denial of Injunction
( ) Dismissal:
  ( ) Lack of Jurisdiction
  ( ) Failure to State a Claim
  ( ) Failure to Prosecute
  ( ) Other
( ) Other (specify) .....

E. *Length of Trial or Hearing:* ..... 2 hours .....

F. *Related Cases:* List all related cases pending in this Court of Appeals as defined in Ninth Circuit Rule 13(b)(4): ..... N/A. .....

G. *Nature of Relief Sought Below:*

( ) Damages: amount sought: $..... amount granted: $.....

(X) Injunctive Relief:

( ) preliminary or (X) permanent
(X) granted or ( ) denied

(X) Declaratory Relief:

(X) granted or ( ) denied

( ) Attorney's fees: amount sought: $..... amount granted: $.....

( ) Other (specify) .....

PLEASE CONFINE YOUR RESPONSES TO H, I, AND J TO THE SPACE PROVIDED.

H. Brief Description of Nature of Action and Result Below:

Complaint for declaratory and injunctive relief brought purportedly by 6 county Democratic Central Comm. and one Republican County Central Comm., the State Libertarian Party Central Comm., a few members thereof, a few party activists and a special interest group calling itself the National Comm. for Party Renewal, with its chapters the Northern and Southern Calif. Comm. for Party Renewal, challenged a number of provisions of the Calif. Elec. Code on the theories that the provisions constituted substantial burdens upon plaintiffs' 1st Amend. rights to freedom of association and expression which are invalid as violations of the 14th Amendment.

Defendants are 7 district attorneys, the Attorney General, and the Secretary of State of Calif., none of whom

have been involved in the enforcement of any of the challenged statutes.

On cross-motions for summary judgment and defendants' motion to dismiss, the District Court entered an order and judgment which invalidated and enjoined the enforcement of Elec. Code sec. 11702 which prohibits party central committees from endorsing candidates for the party nomination for partisan office in the primary elections. The judgment also invalidated and enjoined enforcement of provisions which describe the composition and method of selection of the Republican and Democratic State Central Comm. and the terms of the chairpersons of the Republican and Libertarian State Central Comm. The District Court denied plaintiffs' motion regarding provisions, time and place requirements for meetings of state and county central comm. and limitations on dues which can be required of county comm. members. Defendants' motions for dismissal of jurisdictional (including 11th Amendment) grounds and for abstention were denied as was their motion for summary judgment as to each cause of action and each portion thereof.

I. Issues to be Raised on Appeal:

1. Is there jurisdiction under Article III of the U.S. Constitution to decide each of the issues raised by the complaint?

2. Do prudential principles emanating from Article III and self-governance of the Federal judiciary preclude deciding the issues raised by the complaint?

3. Does the Eleventh Amendment bar the complaint where defendants have not been involved in enforcement of the challenged statutes?

4. Should the District Court have abstained from considering the issues raised by the First and Third Causes of Action?

5. Is the summary judgment erroneous as to each statute which it invalidated?

6. Was summary judgment inappropriate in the context of this case?

7. Should defendants have been granted summary judgment as to each statute challenged by the complaint?

J. Standard of Appellate Review as defined in Ninth Circuit Rule 13(b)(2) (Specify the proper standard of review to be applied by the Court of Appeals for each issue to be raised, citing relevant authority.)

ISSUES: 1 & 2. De novo review — *Juidice v. Vail* (1977) 430 U.S. 327, 331; *Pac. Legal Found.* v. State Energy Resources Etc. (9th Cir. 1981) 659 F.2d 903, 910;

3. De novo review — *Jacobson* v. *Tahoe Regional Planning Agency* (9th Cir. 1977) 558 F.2d 928, 939;

4. De novo review — *Tomiyasu* v. *Golden* (9th Cir. 1966) 358 F.2d 651, 654-655;

5. De novo review — *Garter-Bare Co.* v. *Munsingwear, Inc.* (9th Cir. 1980) 622 F.2d 416, 422;

6. De novo review — *Askew* v. *Hargrave* (1971) 401 U.S. 476, 478-479;

7. De novo review — *International Longshoremen's Ass'n.* v. *Seatrain Lines, Inc.* (2nd Cir. 1964) 326 F.2d 916, 920-921, n. 2.

K. Do you desire oral argument on this appeal? Yes X No ..... If yes, why in your opinion should oral argument be heard .....

The issues presented on appeal concern the jurisdiction of federal courts under Art. III and the Eleventh Amendment to the U.S. Constitution and the State's right to protect the First Amendment rights of members of ballot qualified political parties and to regulate elections which it conducts. The State has been deprived of a fair hearing on these issues and heeds every opportunity to present its case.

L. Attorneys representing appellee(s)/respondent(s)

Appellee(s) S.F. County Democratic Central Committee, et al.

Attorney Morrison & Foerster
Telephone (415) 777-6000

Address: One Market Plaza, Spear Street Tower
San Francisco, CA 94105

Appellee(s) .....

Attorney ..... Telephone ( ) .....

Address: .....

.....

(List additional counsel on separate paper if necessary).

M. Attorney or Party (if pro se) filing docketing statement:

NAME Geoffrey L. Graybill,
Deputy Attorney General

(Telephone) (916) 324-5465

ADDRESS 1515 K Street, Suite 511
Sacramento, CA 95814

Check one: (XX) Attorney ( ) pro se

Check one: (XX) Appellant ( ) Appellee
( ) Cross-Appellant
( ) Cross-Appellee

....

Signature Date

(If this is a joint statement, add names and addresses of other counsel below or on an additional sheet together with certification that they all have concurred in the filing of this statement).

Attach a copy of the judgment or order appealed from and any opinion, findings of fact or conclusions of law supporting the judgment or order. This docketing statement must be accompanied by a proof of service of the statement on opposing counsel.

JOHN K. VAN DE KAMP, Attorney General
of the State of California

N. EUGENE HILL
Assistant Attorney General

GEOFFREY L. GRAYBILL
Deputy Attorney General

1515 "K" Street, Suite 511
Sacramento, California 95814
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Attorneys for Defendants MARCH
FONG EU et al.

DeWITT W. CLINTON, County Counsel
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500 West Temple Street, Room 648
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Attorneys for Defendant ROBERT
PHILOBOSIAN, District Attorney,
County of Los Angeles

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE et al.,

Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California et al.,

Defendants.

DECLARATIONS IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF DEFENDANTS' MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT

Date: April 9, 1984

Time: 10:30 a.m.

(Filed March 29, 1984)

DECLARATION OF ANTHONY L. MILLER

DECLARATION OF NELSON KEMPSKY

DECLARATION OF ALBERT S. RODDA, JR.

DECLARATION OF GEOFFREY L. GRAYBILL

JOHN K. VAN DE KAMP, Attorney General
of the State of California

GEOFFREY L. GRAYBILL, Deputy
Attorney General

1515 K Street, Suite 511
Sacramento, California 95814
Telephone: (916) 324-5465

Attorneys for Defendants

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiffs,

vs.

MARCH FONG EU, Secretary of State of the State of California, et al.,

Defendants.

DECLARATION OF ANTHONY L. MILLER

I, Anthony L. Miller, declare as follows:

1. I am the Chief Deputy Secretary of State and have served the Secretary of State of California, March Fong Eu, in this capacity since January 1981. Prior to being appointed Chief Deputy by the Secretary of State, I served pursuant to her appointment as Chief Counsel to the Secretary of State from March 1976 to January 1981.

2. In my capacities as Chief Counsel and Chief Deputy, I have been involved in all elections law enforcement

activities of the Office of Secretary of State. I am also familiar with the records of the Office of Secretary of State and have consulted with the permanent civil service staff regarding the elections law enforcement activities of the office prior to the tenure of March Fong Eu.

3. I have been authorized by the Secretary of State to make the statements in this declaration on her behalf and on behalf of the Office of the Secretary of State.

4. The Office of Secretary of State has never been involved in regulating or monitoring the internal organization operations activities or procedures of political parties in the State of California. The Secretary of State has never referred a matter involving the organization, operations, procedures or activities of a political party to the Attorney General or a district attorney. The Office of Secretary of State does not view the failure to conform party organization, activity, procedure or operations to statutes regarding those matters as constituting a criminal offense defined by any provision of the Elections Code.

5. The primary responsibility of the Secretary of State as chief elections officer of the state is to monitor and regulate the actions of local elections officers (e.g., the county clerks and registrars) to assure that they perform their duties as prescribed by state elections laws. (See Gov. Code, § 12172.5; Elec. Code, § 55.)

6. The Office of Secretary of State does not monitor the activities of candidates or political organizations during campaigns and elections or otherwise. The Office of Secretary of State has never referred a person or organization to the attention of the Attorney General or a district

attorney for endorsing a candidate for the nomination of a political party or a candidate for a non-partisan office.

7. The Office of Secretary of State does not view the endorsement of a candidate for the nomination of a party by that party's convention, state central committee or county central committee or the members thereof to constitute a criminal offense defined by any provision of the California Elections Code; moreover, it does not view the endorsement of candidates for non-partisan office by such organizations and persons to constitute a criminal offense as defined by any provision of California Elections Code.

If called as a witness I would testify of my personal knowledge as stated herein.

Executed at Sacramento, California on March 21, 1984.

I declare under penalty of perjury that the foregoing statements are true and correct.

/s/ Anthony L. Miller

JOHN K. VAN DE KAMP, Attorney General
of the State of California
N. EUGENE HILL, Assistant
Attorney General
GEOFFREY L. GRAYBILL, Deputy
Attorney General
1515 K Street, Suite 511
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Telephone: (916) 324-5465

Attorneys for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, et al.,

Defendants.

DECLARATION OF NELSON KEMPSKY

I, Nelson Kempsky, declare as follows:

1. I am Chief Deputy Attorney General of the State of California and have served in that capacity through appointment by John K. Van de Kamp, Attorney General of California, since January 1983. I am responsible directly to the Attorney General for administration of the business of the Office of the Attorney General and the Division of Law Enforcement of the California Department of Justice.

2. Prior to my appointment as Chief Deputy I was a Deputy Attorney General in the Criminal Division of the

Office of the Attorney General from 1965 to 1972, 1977-1979 and 1980 to January 1983. From 1972 through 1977 I served as a Deputy Director of the Department of Corrections and from 1979 to 1980 I served as Director of the Division of Law Enforcement of the California Department of Justice.

3. The Office of Attorney General briefs and generally argues the state's case in virtually every appeal of a conviction of a felony criminal offense or in any other form of review of such a conviction by any appellate court. Moreover, the Department of Justice usually becomes aware of any unusual enforcement actions taken by law enforcement agencies in California. Enforcement action with respect to endorsements and political party activities would be considered unusual and be the subject of reports within the Department of Justice. I and the employees of the Department of Justice with whom I have consulted routinely receive reports and monitor documents that provide such information.

4. The California Department of Justice including the Office of the Attorney General and the Division of Law Enforcement does not and, to my knowledge, has not monitored the activities of the political parties in the State of California, nor has it taken any action to enforce any statutes regarding their organization or the conduct of their business. I have consulted with several other employees of the Department of Justice who would know if the Department had taken enforcement action with respect to such statutes and none of them is aware of any such action having been taken. The Department of Justice does not consider violation of such statutes to constitute a criminal offense defined by any provision of the California Elec-

tions Code. I am not aware of any instance where any district attorney has taken any enforcement action with respect to such statutes. I have consulted with several other employees of the Department of Justice who would know if any district attorney had taken enforcement action with respect to such statutes and none of them is aware of any such action having been taken.

5. The California Department of Justice has not to my knowledge taken any enforcement action regarding endorsement of a candidate for the nomination of a political party by the state convention, state central committee, a county central committee of that party or any member thereof. I have consulted with several other employees of the Department of Justice who would know if the Department has taken any enforcement action regarding such endorsements and none of them is aware of any such action having been taken. The California Department of Justice does not consider any such endorsement by state conventions, state central committees and county central committees to constitute a criminal offense as defined by any provision of the California Elections Code including sections 29430 and 29102. Elections Code section 11702 does not define a criminal offense. I am not aware of any instance where any district attorney has taken any enforcement action against any person or organization involving such endorsements. I have consulted with several other employees of the Department of Justice who would know if any district attorney had taken enforcement action with respect to such endorsements and none of them is aware of any such action having been taken.

6. The California Department of Justice has not to my knowledge taken any enforcement action against any

person or organization for endorsement of a candidate for a non-partisan office. I have consulted with several other employees of the Department of Justice who would know if the Department of Justice had taken any enforcement action with respect such persons or organizations and none of them is aware of any such action having been taken. The Department of Justice does not consider such endorsements by any person or organization to constitute a criminal offense defined by the Elections Code. I am not aware of any instance where any district attorney has taken any enforcement action against any person or organization involving such endorsements. I have consulted with several other employees of the Department of Justice who would know if any district attorney had taken enforcement action with respect to such endorsements and none of them is aware of any such action having been taken.

If called as a witness I would testify as stated herein of my own knowledge.

Executed at Sacramento, California on March 23, 1984.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Nelson Kempsky

JOHN K. VAN DE KAMP, Attorney General
of the State of California
N. EUGENE HILL
Assistant Attorney General
GEOFFREY L. GRAYBILL
Deputy Attorney General
1515 K Street, Suite 511
Sacramento, California 95814
Telephone: (916) 324-5465

Attorneys for Defendants MARCH
FONG EU

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC
CENTRAL COMMITTEE et al.,

Plaintiffs,

v.

MARCH FONG EU, Secretary of State
of the State of California, et al.,

Defendants,

DECLARATION OF
ALBERT S. RODDA, JR.

I, ALBERT S. RODDA, JR., declare as follows:

I. I have been active in the affairs of the California Democratic Party throughout my adult life.

2. From 1958 until 1980 I had been elected and re-elected as the nominee of the Democratic Party to represent Sacramento County in the Senate of the California

Legislature. I represented Sacramento County in the State Senate continuously from 1958 through December 1980.

3. I earned a Ph.D. in American history from Stanford University in 1951 and taught economics and California history at Sacramento City College from 1946 to 1967 when I resigned to devote full time to my duties in the State Senate.

4. From 1952 through 1958 I was a member of the Sacramento County Democratic Central Committee and served as chairperson of the Committee during 1956 and 1957.

5. As a member of the State Senate I was, pursuant to the Charter of the California Democratic Party as ratified by statutes of the State of California, a member of the California Democratic Central Committee.

6. During my twenty-two years in the State Senate changes to statutes regarding the structure and procedures of the major political parties were enacted at the request and with the concurrence of the party affected. The members of the Legislature from one political party acquiesced in and did not attempt to influence legislation sponsored by the members of the other party regarding the affairs of that party. The legislation regarding the affairs of a political party was enacted, therefore, at the request of and with the support of the party affected.

7. The Democratic and Republican parties of California have traditionally supported the California election law which denies the state convention, the state central committee, and the county central committees the au-

thority to endorse candidates seeking the nomination of the party in a primary election. The reason for this support by the parties for the past half century is the determination to guarantee a continuation of the delineation of party responsibilities embodied in the original law which was enacted in 1911 as a result of a political reform movement engaged in by the leaders of both parties.

8. During the time I have been a member of the Democratic Party the role assigned by the party to the convention and the central committees has been that of working for the election of the party's nominees for statewide office, the Legislature and Congress. The central committees, especially the county central committees, must be cohesive and aggressive teams in order to carry out this function.

9. If the state and county central committees were allowed to endorse candidates for the party's nomination, my experience in party affairs convinces me that the process of determining an endorsement which is contested, even if the endorsement is ultimately unanimous through abstentions or otherwise, would produce divisiveness in the committee which would impede its ability to carry out its primary function—that of working for the election of the party's nominee in the November general elections.

10. State and county central committees, by virtue of the fact that they do not participate in primary elections, are able consistently to function as a self-healing mechanism for the party because the credibility of the committee as a neutral has a capability of functioning as a catalyst through which the previously competing fac-

tions within the party can cooperate in achieving the election of the party's nominees.

11. There is a possibility also that the divisiveness resulting from central committee involvement in partisan primary elections will weaken the loyalty of elected officials, including members of the Legislature, to their party and generate over a period of time some political momentum to return to the cross-filing type of primary, a practice in California which favored incumbents and weakened the effectiveness of political parties. Such an eventuality would tend to dilute even further the influence of the political parties in the election of partisan officeholders.

12. The dynamics involved in endorsement by central committees of candidates for nonpartisan office are similar. The endorsement process creates divisiveness within a central committee which can adversely affect the committee's ability to campaign effectively for the party's nominees in the November elections, which is the committee's primary function and the justification for its existence. Moreover, successful candidates for nonpartisan offices whose opponents were endorsed by a central committee will, in many cases, carry resentments against the party organization during their political careers which is likely to be contrary to the interests of the party organization.

13. The uniform ban on primary endorsements by state and county central committees effected by state law has been supported by both the California Democratic and Republican parties because it is unquestionably in their interests.

14. The parties have established central committees for the purpose of securing the election to office of the nominees who are selected by party members at the primary elections. Everyone who seeks election to a county central committee and is elected knows that that office is limited in its responsibilities and that that is its function. Democratic and Republican county committee members who seek to expand this role to pre-primary endorsements are undertaking an effort to change dramatically the concept embodied in the primary election law which was originally enacted in this state by a coalition of reform Republicans and Democrats as a means of strengthening the role of the people in the political process and weakening that of organized special interest groups which dominated California politics in the latter part of the 19th century and the first decade of the 20th century. The abandonment of this practice, nonendorsement of nonpartisan candidates and of partisan candidates in primary elections, will create intraparty fragmentation into rival groups and generate serious personal rivalries and factionalism.

15. The wisdom of the ban on endorsements by state and county central committees is borne out by an experience I had as a member of the Sacramento County Democratic Central Committee. In accordance with procedures set out in its bylaws, the committee in early October approved a brochure in the form of a sample ballot for the November general election marking the Democratic Party's nominees for all of the partisan offices on the ballot. Afterwards and without presenting it for consideration by the committee in accordance with the bylaws, the chairperson and a few of his associates

added the name of a candidate for the superior court to the brochure and marked the mock ballot demonstrating an endorsement by the committee. Not only did the vast majority of the committee view the endorsement as illegal, as a violation of state party policy and as in violation of the policy and procedures of the committee, but they did not favor the candidate who was endorsed. This incident created so much divisiveness and bad feeling amongst the members of the committee that it could not function in the remainder of the general election campaign. The newspapers gave extensive coverage to the conflict within the committee.

16. Opportunities abound for party members to associate in endorsing candidates for the nomination of the party and for nonpartisan office. I have been active in several such associations which have been very effective. I was an active leader in Sacramento County in bringing into existence the California Democratic Council in the early fifties and in helping create a number of local Democratic Clubs. I also have been a member of the Harry S. Truman Club since its establishment in Sacramento. It supports, on a selective basis, Democratic candidates seeking the nomination of the party in partisan primary elections and also candidates for nonpartisan elective office who are registered as Democrats.

17. The Democratic Party has among its members persons of all ethnicities and races and of widely varying backgrounds whose interests and views are often conflicting. One of the features of the party which distinguishes it from other political parties and commands the allegiance of its members is its commitment in its own

governance to openness and responsiveness to all factions. I have read the first amended complaint of the legal action for which I am submitting this declaration. The statutes which are challenged by the complaint are essential to preventing one faction or another from co-opting official party organizations at the state or local levels. Without the power to endorse candidates for the party's nomination or nonpartisan office, factions have little incentive to try to co-opt central committees and therefore persons interested in doing the "nuts and bolts" work of the party become members of the central committees. When co-option of a party organization by a faction occurs the other factions are often excluded from effective participation in official party organization, become alienated and their allegiance to and confidence in the Party dissipates. The effectiveness of the Party is severely damaged as a result. The statutes regarding party organization and procedure provide some protection against devices used by factions to exclude others from participation in party affairs.

18. My career and experience demonstrate, and I know, that the individual plaintiffs can associate with others to effectively participate in the campaigns of their favored candidates for the party's nomination or for nonpartisan office notwithstanding the bans by statute and party policy of endorsements by official party organizations. Party organizations can and do provide or sponsor workshops for interested potential candidates. There is never any shortage of interested and qualified candidates and the voting members of the party are perfectly capable of discerning which candidate for the nomination

or nonpartisan office fit their perception of what a "good" Democrat is.

19. In 1972 I authored Senate Constitutional Amendment 32 which revised article II of the California Constitution relating to suffrage. SCA 32 was passed by the Legislature and signed by the Governor. It was adopted by vote of the people as Proposition 7 on the ballot for the general election in November 1972. A copy of the ballot pamphlet for the November 1972 election as it pertains to Proposition 7 which was distributed by the California Secretary of State to all registered voters is attached hereto as Exhibit A. Also attached hereto as collective Exhibit B are a copy of a letter, with a five-page attachment, from me to all of my colleagues in the Senate explaining SCA 32 and urging its passage, a copy of the report of the Constitution Revision Commission upon which sections 4 and 5 of article II as enacted in 1972 were based and a copy of the report of the Senate Elections and Reapportionment Committee on SCA 32.

20. As is apparent from Exhibits A and B, section 4, relating to primary elections for partisan office did not eliminate any of the power of the Legislature to regulate political parties and the terms and conditions upon which political parties may participate in primary elections. As the Constitution Revision Commission points out in its analysis, the verbiage of former section 2.5 of article II relating to primary elections was unnecessary because the Legislature notwithstanding section 2.5 of article II had the power to and had enacted a comprehensive scheme of law governing political parties and their participation in primary election which would be unaffected by enactment of section 4. As I explained to my colleagues in the

Legislature and the voters in urging them to enact SCA 2 and Proposition 7, section 4, effected no change in the Constitution but merely eliminated excess verbiage.

21. As is apparent from Exhibits A and B, I also explained that section 5 continued the ban of section 2¾ on participation by political parties in elections for judicial, school, county and city offices but merely changed the outdated term "township" to the modern term "city" and eliminated verbiage which was redundant due to existing statutes governing elections which the Legislature was otherwise empowered to enact.

If called as a witness, I would testify of my personal knowledge as stated above.

Executed at Sacramento, California, on March 23, 1984.

I declare under penalty of perjury that the foregoing statements are true and correct.

/s/ Albert S. Rodda, Jr.

(Exhibits A and B omitted in printing)

JOHN K. VAN DE KAMP, Attorney General
of the State of California
N. EUGENE HILL, Assistant
Attorney General
GEOFFREY L. GRAYBILL, Deputy
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Attorneys for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, et al.,

Defendants.

DECLARATION OF GEOFFREY L. GRAYBILL IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF DEFENDANTS' MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT

Date: April 9, 1984
Time: 10:30 a.m.

I, GEOFFREY L. GRAYBILL, declare as follows:

1. I am an attorney licensed to practice law in the State of California, a member of the bar of this Court, and as a Deputy Attorney General of the State of Cali-

fornia am a counsel of record for most of the defendants herein.

2. Appended hereto as Exhibit A is a true and correct copy of a letter dated March 19, 1984, which I wrote and caused to be mailed to plaintiffs' counsel of record on the date of the letter. The letter requests information in the possession or under the control of plaintiffs or their counsel. The requests for information were, as stated in the letter, read by me over the telephone on March 19, 1984, to Paul Dieseth who represented to me, as he acknowledged each request, that he was writing them down.

3. As is apparent from the defendants' memorandum of points and authorities which is submitted with this declaration, the requests set forth in the letter are designed to illicit information which may constitute evidence or lead to admissible evidence which demonstrates that the views expressed by plaintiffs are contrary to the positions of their respective parties, that plaintiffs knew this prior to bringing this action, that the statutes which they challenge were enacted at the request of and/or with the active support of their parties, whether the plaintiff county central committees and State Central Committee of the Libertarian Party authorized this action to be brought in their names, the scope of the authority of such central committees pursuant to their bylaws and whether a particular faction or factions within have been advocating the relief requested by plaintiffs. All of this information is relevant to the issue of whether the First Amendment rights asserted by plaintiffs are affected by the challenged statutes, whether the relief requested would impair the First Amendment rights of persons not parties

to this action but on whose behalf plaintiffs purport to speak and whether plaintiffs have standing to invoke the jurisdiction of this Court.

4. As of the date of this declaration, none of the requested information has been received from plaintiffs or their counsel. Plaintiffs' attorneys, Mr. Chao and Mr. Dieseth, have informed me that they will be objecting to most of the requests and will not be providing most of the rest of the information within the period allowed for briefing in this case.

5. I have contacted the offices of the Democratic and Republican State Central Committees by telephone requesting information regarding the positions that the Central Committees have taken at any time on the statutes challenged in this litigation and an opportunity to review the agendas and minutes and related documents of the committees and their executive committees. The chairperson of the Democratic State Central Committee, and the Executive Director of the committee were unavailable but I did speak with the political director of the Central Committee, Kris Schwenkmeyer, on or about March 19 or 20, 1984. Ms. Schwenkmeyer informed me that a proposed resolution to join as plaintiffs in this action was presented to the Executive Committee and was rejected. I gave her my address and phone number and requested that she send me a copy of the resolution and the minutes manifesting the disposition of the resolution; she assured me that she would do so. The Democratic State Central Committee conducts its business from its Los Angeles office this year. As of the date of this declaration I have not received a copy of the resolution or the minutes.

6. In the same conversation, I requested an opportunity to review the minutes and agendas and related documents of the Central Committee for information regarding the enactment of the statutes challenged in this litigation and the party's policies regarding the subject matter. Ms. Schenkmeyer told me that she did not know where such documents were kept or whether they exist. Ms. Schwenkmeyer stated that she was not aware of any action taken by the Central Committee or the Executive Committee requesting repeal or amendment of any of the statutes in question. She stated that she would contact an employee of the central committee who might know and ask her to call me because the person was working part-time so that I could not contact her. I requested that the Executive Director return my call. As of the date of this declaration, I have not heard from anyone representing the Democratic State Central Committee.

7. On or about March 21 or 22, 1984, I contacted the offices of the Republican State Central Committee in Sacramento by telephone and asked to speak to the chairperson or the Executive Director neither of whom was available. I did speak to John Rico, the Political Director, and requested of him the same information requested of Ms. Schwenkmeyer. He informed me that the Chairperson of the State Central Committee had been contacted by some of the plaintiffs in this action and was invited to join as a plaintiff but in what capacity, i.e., as chairperson and/or on behalf of the State Central Committee, was unclear. Mr. Rico informed me that the chairperson refused to join in any capacity. Mr. Rico stated that he was unaware of any action by the State Central Committee or the Executive Committee requesting repeal or amendment of the

statutes challenged in this action. He also informed me that the records of the State Central Committee were kept in both Burbank, California, and Sacramento and that he was unaware of just what these records contained.

8. The files of the author of the legislation originally enacted what is now Elections Code section 11702 are not in the State Archives. The legislator is dead and I am informed by former members of his staff that his legislative files are in the possession of his widow in El Monte, California. Records relating to enactment of section 11702 could demonstrate the involvement of the political parties in enacting that statute.

9. I was assigned to represent defendants after the answers to plaintiffs' requests for discovery were submitted on January 27, 1984. The deputy previously assigned to the case had to take a leave of absence which required reassignment of the case in light of the status conference in this case scheduled for February 27, 1984. I have had to adjust an otherwise full caseload to handle this case. When I was informed by the court on February 27 that all motions had to be filed by March 5, 1984, I had to request extensions of time from other courts on matters pending before them in order to try to accommodate the unexpectedly tight time constraints imposed in this case.

10. Contacting witnesses, researching the law, preparing the documents and memoranda filed in this action within the unusually tight time constraints of this case has not permitted development of evidence as indicated in this memorandum which I am convinced should be in the record of this case to protect defendants' rights on

appeal if a judgment is entered against them on any of the causes of action in this action.

If called as a witness I would testify of my own knowledge as stated herein.

Executed at Sacramento, California, on March 26, 1984.

I declare under penalty of perjury that the foregoing is true and correct.

GEOFFREY L. GRAYBILL

March 19, 1984

James J. Brosnahan, Esq.
Morrison & Foerster
One Market Plaza
Spear Street Tower
San Francisco, California 49105

San Francisco County Democratic Central Comm., et al. *v. March Fong Eu*, et al., U.S. District Court for *Northern District of California, No. C 83-5599 MHP*

Dear Mr. Brosnahan:

Pursuant to the instructions of the court and the assurances of cooperation by your co-counsel at the status conference conducted by the court for this action on February 27, 1984, defendants make the following informal requests for discovery due to the unusually tight time constraints within which the motions for dismissal and summary judgment now pending before the court were required to have been filed and heard. These requests were transmitted by telephone to your associate Paul Dieseth on March 19, 1984.

1. Minutes or other documentation reflecting the votes of the members of the plaintiff county central committees authorizing the instant litigation and each cause of action thereof. State whether all votes were cast in person at a meeting of the committee and, if not, a detailed description of how such vote was taken.

2. If no such documentation exists, a sworn statement on personal knowledge of how authority to sue was attained from each plaintiff county central committee.

3. Roster with names, home addresses and phone numbers of each member of each plaintiff county central committee.

4. Copies of by-laws and other written statements of procedure and policy of each plaintiff county central committee.

5. Copies of the current constitution, charter, by-laws and rules of the national Republican, Democratic and Libertarian parties in the possession or under the control of any plaintiff.

6. Copies of the current constitution, charter, by-laws and rules of the California Republican, Democratic and Libertarian parties in the possession or under the control of any plaintiff.

7. Copies of any written communications within the past five years from any national or state central committee of the Republican, Democratic and Libertarian parties or officials thereof regarding matters complained of in this litigation in the possession or under the control of any plaintiff.

8. Copies of all written communications within the past five years from all plaintiffs to the national committees, California state central committees and officials thereof of the Democratic, Republican and Libertarian parties regarding matters complained of in this litigation.

9. All of the information and documentation identified in requests 1, 2 and 3 above with respect to the plaintiff state Central Committee of the Libertarian Party of California.

10. All written communications in the past five years received by any plaintiff from organizations or groups or officers or employees thereof or sent by any plaintiff to such entities or persons regarding the issues raised in this litigation.

Defendants request that complete responses to the foregoing requests, with copies of the indicated communications, be provided in writing at the office of the undersigned if at all possible no later than Friday, March 23, 1984. As you pointed out to Judge Patel on March 12, when you opposed defendants' application for an extension of time to properly respond to plaintiffs' motion for summary judgment, plaintiffs and their counsel did not file the complaint in this action until November 17, 1983, and the first amended complaint until on or about December 5, 1983, because the process of preparing plaintiffs' case was time-consuming and laborious. Having taken so much time and care in preparing your case, it is reasonable to assume that the requested information is already in your possession or is readily available.

Unlike plaintiffs, defendants have been under tight time constraints from the beginning of this litigation in responding to the complaint, to plaintiffs' requests for discovery and now to plaintiffs' voluminous motion for summary judgment. Thus, defendants have been deprived of the time necessary to adequately research and understand the context in which the issues of this litigation are raised, to prepare for trial or to prepare a fair record if this matter is determined through summary procedures. Defendants have not been involved in monitoring the activities of the political parties in California because their duties have not included this function. This fact is a basis for defendants' motion to dismiss. This fact also makes defendants dependent on the knowledge and record of persons outside of government to adequately defend against the issues raised by the complaint if, as appears to be a *fait accompli*, defendants are required to respond on the merits.

Defendants' counsel have devoted and are continuing to devote intensive efforts to the laborious and time-consuming process of identifying the persons outside of government who have the necessary knowledge and who are willing to provide information without the compulsion of judicial process which the court has acknowledged is not a practical alternative given the time-constraints involved in this litigation. The leads and information which defendants' counsel have acquired to date, though tentative and preliminary, indicate that the views expressed by plaintiffs are not representative of most members of their parties, are contrary to the actual positions of their parties and are deleterious to the interests of their parties.

This information if adequately developed and validated would have profound adverse effects both on plaintiffs' standing to litigate any of the issues raised by the complaint and on plaintiffs' positions on the merits of these issues.

Inasmuch as the court has made a point of informing defendants that they have no assurance that they will have an opportunity to present evidence for introduction into the record of this litigation after final briefing of the pending motions are filed by mail on April 2, 1984, your timely response to defendants' request is of critical importance. Defendants have endeavored to get the information of the nature requested of you themselves but so far have been unable to secure almost all of it. Obviously, these requests are of necessity of a preliminary nature and in order for

defendants to prepare a fair record in this litigation, much follow-up would be required.

Very truly yours,
JOHN K. VAN DE KAMP
Attorney General

Geoffrey L. Graybill
Deputy Attorney General

GLG/lac

cc: Honorable Marilyn Hall Patel, Judge
U.S. District Court

Clerk, U.S. District Court for
the Northern District of California

bcc: Philip Hickok, Deputy County Counsel, L.A.
Arlo Smith, D.A., San Francisco
Leo Himmelsback, D.A., Santa Clara County
Jack Shelley, D.A., Placer County

JOHN K. VAN DE KAMP, Attorney General
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Attorneys for Defendants
MARCH FONG EU

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, et al.,

Defendants.

DECLARATION OF MICHAEL E. NAIL IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND FOR SUMMARY JUDGMENT

(Filed April 3, 1984)

Date: April 9, 1984
Time: 10:30 a.m.

I, MICHAEL E. NAIL, declare as follows:

1. I have been District Attorney for Solano County, California, since December 31, 1982.

2. Prior to becoming District Attorney, I was employed continuously since Septmber 1, 1967, as a trial attorney or supervising trial attorney in the office of the District Attorney for Solano County.

3. During the time that I have been District Attorney or a trial attorney or supervising trial attorney in the office of the District Attorney for Solano County I have not been involved in, nor am I aware of the office having brought any enforcement action with regard to endorsements of candidates for the nomination of the party in a primary election or for nonpartisan office by state party conventions, state party central committees or county party central committees, or members thereof or with regard to the organization, operations or procedures of such organizations. If such enforcement actions had been taken I would have been aware of them.

4. In my opinion, violations of Elections Code section 11702 or of the provisions of the Elections Code regarding the organization, operations and procedure set out in the third cause of action of the First Amended Complaint in this action and endorsement by state party conventions, state party central committees or county party central committees of candidates for nonpartisan office do not constitute criminal offenses defined by any provision of the Elections Code.

If called as a witness I would testify of my personal knowledge as stated herein.

Executed at Fairfield, California, on April 2, 1984.

I declare under penalty of perjury that the statements herein are true and correct.

/s/ Michael E. Nail

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of the State of California
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Attorneys for Defendant MARCH FONG EU, et al.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiff,

v.

MARCH FONG EU, Secretary of State of the State of California, et al.,

Defendants.

DECLARATION OF JOHN J. MEEHAN IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND FOR SUMMARY JUDGMENT

(Filed April 3, 1984)

I, JOHN J. MEEHAN, declare as follows:

1. I have been District Attorney for Alameda County, California since April 1981.

2. I joined the Office of the District Attorney for Alameda County as an attorney in October, 1960, and was employed as an attorney in that office continuously until I became District Attorney in April 1981.

3. During the time that I have been District Attorney or a Deputy or an Assistant District Attorney for Alameda County I have not been involved in, nor am I aware of the office having brought any enforcement action with regard to endorsement of candidates for the nomination of the party in a primary election or for nonpartisan office by state party conventions, state party central committees or county party central committees or members thereof or with regard to the organization, operations or procedures of such organizations. If such enforcement actions had been taken I would have been aware of them.

4. In my opinion, violations of Elections Code section 11702 or of the provisions of the Elections Code regarding the organization, operations and procedures set out in the third cause of action of the First Amended Complaint in this action and endorsement by state party conventions, state party central committees or county party central committees of candidates for non-partisan office do not constitute criminal offenses defined by any provision of the Elections Code.

If called as a witness I would testify of my personal knowledge as stated herein.

Executed at Oakland, California on April 2, 1984.

I declare under penalty of perjury that the statements herein are true and correct.

/s/ John J. Meehan

JOHN K. VAN DE KAMP, Attorney General
of the State of California
N. EUGENE HILL
Assistant Attorney General
GEOFFREY L. GRAYBILL
Deputy Attorney General
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Attorneys for Defendants MARCH
FONG EU

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC
CENTRAL COMMITTEE et al.,

Plaintiffs,

v.

MARCH FONG EU, Secretary of State
of the State of California, et al.,

Defendants.

DECLARATION OF JACK E. SHELLEY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND FOR SUMMARY JUDGMENT

(Filed April 3, 1984)

Date: April 9, 1984
Time: 10:30 a.m.

I, JACK E. SHELLEY, declare as follows:

1. I have been District Attorney for Placer County, California, since January 1983.

2. From November 1973 through January 1983, when I became District Attorney, I was a senior trial lawyer in the office of the Placer County District Attorney.

3. From 1963 through 1970 I was a Deputy District Attorney in the office of the District Attorney of Alameda County as well as a felony inspector.

4. During the time I have been District Attorney or a Deputy District Attorney, I have not been involved in, nor am I aware of, either of the offices of district attorney which I have been associated with, having brought any enforcement action with regard to endorsements of candidates for the nomination of the party in a primary election or for nonpartisan office by state party conventions, state party central committees or county party central committees or members thereof or with regard to the organization, operations or procedures of such organizations. If such enforcement actions had been taken I would have been aware of them.

5. In my opinion, violations of Elections Code section 11702 or of the provisions of the Elections Code regarding the organization, operations and procedure set out in the third cause of action of the First Amended Complaint in this action and endorsement by state party conventions, state party central committees or county party central committees of candidates for nonpartisan office do not constitute criminal offenses defined by any provision of the Elections Code.

If called as a witness I would testify of my personal knowledge as stated herein.

Executed at Auburn, California, on March 30, 1984.

I declare under penalty of perjury that the statements herein are true and correct.

/s/ Jack E. Shelley

JOHN K. VAN DE KAMP, Attorney General
of the State of California
N. EUGENE HILL
Assistant Attorney General
GEOFFREY L. GRAYBILL
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Attorneys for Defendants MARCH
FONG EU

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE et al.,

Plaintiffs.

v.

MARCH FONG EU, Secretary of State of the State of California, et al.,

Defendants.

DECLARATION OF LEO HIMMELSBACH IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND FOR SUMMARY JUDGMENT

Date: April 9, 1984
Time: 10:30 a.m.

(Filed April 3, 1984)

I, LEO HIMMELSBACH, declare as follows:

1. I have been District Attorney of Santa Clara County, California, since January 1983.

2. Prior to becoming District Attorney, I served as a Deputy or Assistant District Attorney for Santa Clara County continuously since December 1961.

3. During the time that I have been District Attorney or a Deputy or an Assistant District Attorney for Santa Clara County I have not been involved in, nor am I aware of the office having brought any enforcement action with regard to endorsements of candidates for the nomination of the party in a primary election or for nonpartisan office by state party conventions, state party central committees or county party central committees or members thereof or with regard to the organization, operations or procedures of such organizations. If such enforcement actions had been taken I would have been aware of them.

4. In my opinion, violations of Elections Code section 11702 or of the provisions of the Elections Code regarding the organization, operations and procedure set out in the third cause of action of the First Amended Complaint in this action and endorsement by state party conventions, state party central committees or county party central committees of candidates for nonpartisan office do not constitute criminal offenses defined by any provision of the Elections Code.

If called as a witness I would testify of my personal knowledge as stated herein.

Executed at San Jose, California, on April 2, 1984.

I declare under penalty of perjury that the statements herein are true and correct.

/s/ Leo Himmelsbach

JOHN K. VAN DE KAMP, Attorney General
of the State of California
N. EUGENE HILL
Assistant Attorney General
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1515 K Street, Suite 511
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Attorneys for Defendants
MARCH FONG EU, et al.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE et al.

Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, et al..

Defendants.

DECLARATION OF WILLIAM A. O'MALLEY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND FOR SUMMARY JUDGMENT

Date: April 9, 1984
Time: 10:30 a.m.

(Filed April 3, 1984)

I, WILLIAM A. O'MALLEY, declare as follows:

1. I have been District Attorney for Contra Costa County, California, continuously since August 19, 1969.

2. Prior to becoming District Attorney, I was a Deputy District Attorney for Contra Costa County from February 18, 1963, through September 4, 1964, and from May 17, 1965, through November 21, 1966.

3. During the time that I have been District Attorney or a Deputy District Attorney for Contra Costa County I have not been involved in, nor am I aware of the office having brought any enforcement action with regard to endorsements of candidates for the nomination of the party in a primary election or for nonpartisan office by state party conventions, state party central committees or county party central committees or members thereof or with regard to the organization, operations or procedures of such organizations. If such enforcement actions had been taken, I would have been aware of them.

4. In my opinion, violations of Elections Code section 11702 or of the provisions of the Elections Code regarding the organization, operations and procedure set out in the third cause of action of the First Amended Complaint in this action and endorsement by state party conventions, state party central committees or county party central committees of candidates for nonpartisan office do not constitute criminal offenses defined by any provision of the Elections Code.

If called as a witness, I would testify of my personal knowledge as stated herein.

Executed at Pacific Grove, California, on April 2, 1984.

I declare under penalty of perjury that the statements herein are true and correct.

/s/ William A. O'Malley

———

JOHN K. VAN DE KAMP, Attorney General
of the State of California
N. EUGENE HILL
Assistant Attorney General
GEOFFREY L. GRAYBILL
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Attorneys for Defendants MARCH FONG EU

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NO. C-83-5599 MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, et al.,

Defendants.

DECLARATION OF ROBERT PODESTA IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND FOR SUMMARY JUDGMENT

Date: April 9, 1984
Time: 10:30 a.m.

(Filed April 6, 1984)

I, ROBERT PODESTA, declare as follows:

1. I have been employed as an attorney by the Office of the District Attorney for the City and County of San Francisco continuously since January, 1964. In Sep-

tember of 1982 I was appointed Chief Assistant District Attorney for the City and County of San Francisco.

2. During the time that I have been employed by the Office of District Attorney, I have not been involved in, nor am I aware of the office having brought any enforcement action with regard to endorsements of candidates for the nomination of the party in a primary election or for nonpartisan office by state party conventions, state party central committees or county party central committees or members thereof or with regard to the organization, operations or procedures of such organizations. If such enforcement actions had been taken I would have been aware of them.

3. The office of the District Attorney for the City and County of San Francisco does not consider violations of Elections Code section 11702 or of the provisions of the Elections Code regarding the organization, operations and procedure set out in the third cause of action of the First Amended Complaint in this action and endorsement by state party conventions, state party central committees or county party central committees of candidates for nonpartisan office to constitute criminal offenses defined by any provision of the Elections Code.

If called as a witness I would testify of my personal knowledge as stated herein.

Executed at San Francisco, California, on April 4, 1984.

I declare under penalty of perjury that the statements herein are true and correct.

/s/ Robert Podesta

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; et al.,

Plaintiffs,

v.

MARCH FONG EU, Secretary of the State of California; et al.,

Defendants.

DECLARATION OF CURT LIVESAY

I, CURT LIVESAY, declare as follows:

1. I currently hold the position of Director, Central Operations in the Office of the Los Angeles County District Attorney. Prior to this I held the position of Chief Deputy from 1979-1983.

2. I have been an attorney in the District Attorney's Office for the past 18 years.

3. During the time that I have been in the office of the District Attorney for Los Angeles County I have not been involved in, nor am I aware of the office having brought any enforcement action with regard to the en-

dorsement, support or opposition of candidates for the nomination of any political party in a primary election or for nonpartisan offices by state party conventions, state party central committees or county party central committees or any member thereof or with regard to the organization, operation or procedure of any such organization. I have consulted with several other attorneys of this office who would be likely to know if the office had taken enforcement action with respect to this activity and none of them is aware of any such action having been taken. If such enforcement actions had been taken I or such individuals would have been aware of them.

4. In the opinion of this office, violations of Elections Code section 11702 or of the provisions of the Elections Code regarding the organization, operation or procedure set out in the third cause of action of the First Amended Complaint in this action or endorsement by state party conventions, state party central committees or county party central committees of candidates for nonpartisan office do not constitute criminal offenses defined by any provision of the Elections Code.

If called as a witness I would testify of my personal knowledge as stated herein.

Executed at Los Angeles, California, on April 6, 1984.

I declare under penalty of perjury that the statements herein are true and correct.

/s/ Curt Livesay

Opinion No. 54-29—March 9, 1954

SUBJECT: POLITICAL PARTIES—County Central Committee of, may not endorse or support one of several candidates of the party in pre-primary campaign for nomination.

Requested by: ASSEMBLYMAN, 19th DISTRICT.

Opinion by: EDMUND G. BROWN, Attorney General. Leonard M. Friedman, Deputy.

Honorable Charles W. Meyers, Member of the Assembly, has presented the following question:

May the county central committee of a political party lawfully endorse a candidate prior to the primary election?

The conclusion is summarized as follows:

A county central committee, as an entity, may not lawfully endorse or support one of several candidates of the same party who oppose each other in the pre-primary campaign.

ANALYSIS

The question is as to the legality of pre-primary endorsements by county central committees of the various political parties. Before the primary may such a committee—in its offical capacity as a lawfully constituted party organ—endorse one of several contending candidates for its party's nomination? By the same token, may the committee support that candidate's primary election campaign? Conversely, are the committee's campaign efforts limited to furthering the general election campaign of those candidates of its party who have previously been nominated at the primary?

In exploring these questions we consider only the scope of the committee's actions as an entity. We are not concerned with the activities of the committee members as individual citizens or as members of unofficial party organizations. Nor do we discuss what legal remedies are available to correct improper committee action. Suffice it to say here that there are certain party obligations with which the courts do not meddle and which are left to internal correction within the party (*Sharboro v. Jordan* (1912), 164 Cal. 51; *Hutchinson v. Brown* (1898), 122 Cal. 189; see also 169 A.L.R. 1281).

Our election laws offer no obvious answer. Section 2831 of the Elections Code provides for the election of county central committees of the respective political parties in each county. In counties having twenty or more assembly districts (i.e., Los Angeles County) the county committees are elected every four years at the presidential primary. In all other counties, the election occurs at the direct primary every two years. Section 2831 states: " . . . The county central committee shall have charge of the party campaign under general direction of the State central committee or of the executive committee selected by the State central committee."

Section 2832 of the Code provides that the county committees "shall perform such other duties and services for their respective political parties as seem to be for the benefit of each party." It also declares that county committees shall function and exist from one primary election until the next.

Before the establishment of the direct primary system political parties were regarded as voluntary associa-

tions and their committees as the executive organs of these associations. At that time state and county central committees were governed primarily by party custom and usage (see *Spelling v. Brown* (1898), 122 Cal. 277; *Hutchinson v. Brown,* supra, 122 Cal. 189). The advent of direct primary laws entailed statutory recognition of political party organs and an increasing degree of statutory regulation. To a certain extent, not yet completely delineated by the courts, party committees have taken on limited public attributes (*Katz v. Fitzgerald* (1907), 152 Cal. 433). On several occasions the Federal Supreme Court has identified the action of party committees with "state" action for the purposes of the Fifteenth Amendment (*Smith v. Allwright* (1943), 321 U.S. 649; *Nixon v. Condon* (1932), 286 U.S. 73; *Nixon v. Herndon* (1927), 273 U.S. 536).

Nevertheless the laws regulating political parties do not make them agencies of the government (see *Harrell v. Sullivan* (Ind., 1942), 40 N.E. 2d 115). California party committees are no more public agencies than were their counterparts in the pre-primary era. Nor have their members become public officers. In defining the scope of committee activities in California, the problem is not to find an express delegation. As party organs these committees still possess the powers conferred upon them by party usage and of which the law has not deprived them.

That California party practices have ever sanctioned "official" pre-convention or pre-primary slates is a matter of extreme doubt. In 1896 Chief Justice Beatty described the role of the party central committees as

follows: ". . . according to universal party usage in California, the central or executive committee of a party has no function after one [general] election is over, except to preserve the organization and take the necessary preliminary steps for the assembling of the next convention.

"It has no right to forestall or in any manner limit or curtail the powers of the convention which it calls. The convention, when assembled, is the depositary of all party power, and so continues until it adjourns, after which a new committee comes into power for the mere purpose of conserving the party interests pending the elections, and of doing thereafter such things as may be provisionally necessary to keep the regular organization and call another convention. . . ." (*Hutchinson v. Brown*, supra, 122 Cal. at 193).

This description was echoed a half century later by another observer: "Custom and usage indicate that the function of party central committees is the general election, not the primary" (Farrelly and Hinderaker, *The Politics of California*, p. 91).

Mr. Justice Beatty's description indicates that in the convention era the central committee's basic function was to accept and campaign for the convention's nominees. Party usage apparently did not permit the committee to anticipate the convention's choice by presenting it with an "official" pre-convention slate or to use party funds to push one of several pre-convention aspirants. It would be naive to suppose that the central committees of those days meticulously refrained from attempts to steer the conventions. What such a committee might do as a group of individuals or an unofficial caucus is one thing. What

it might do as a representative party organ, taking official action at an official meeting, is another. Such limitations as existed applied to the committee solely in its official, representative character.

In 1909 the direct primary system substituted state-operated party elections for the former conventions. Although the basic elements of the system were established by the act of 1909, our present direct primary law is a codification of the Primary Election Act of 1913. The 1913 law installed cross-filing as a feature of the California primaries. The rigid test of party allegiance imposed by the former law was replaced by a provision allowing candidates to offer themselves for the nomination of more than one party (Calif. Stats. 1913, ch. 690, p. 1389). The 1913 law also eliminated the system by which county central committees were selected at party conventions held in the counties after the primary. County committees were to be elected directly by the voters at the primary elections. Such committees were to "have charge of the party campaign under general direction of the state central committee . . ." (Calif. Stats. 1913, ch. 690, p. 1407).

The 1913 law carried statutory recognition of these committees only between the primary election and the culmination of "the party campaign" at the general election. Statutory recognition ceased with the general election.

The essence of the California direct primary system as established by the 1913 law was to place the unfettered choice of each party's candidates in the hands of the

primary election voters (*Hart v. Jordan* (1914), 168 Cal. 321, 323; *Heney v. Jordan* (1918), 179 Cal. 24, 31). The election of the candidates, and even of its county central committee members, was completely withdrawn from party conventions and caucuses. If, as we believe, the central committees were prevented by established usage from placing slates of "official" candidates before the former conventions, certainly there was nothing in the 1913 law from which to infer the birth of such a practice. Central committees, as official party organs, had no more power to anticipate the voters than they did at the conventions.

The history of those times supports this belief. The 1913 law was substantially the creation of the Bull Moose or Progressive group. As insurgents from the regular Republican organization of that day, it was their aim and intent to minimize the role of the established party agencies (see *Sbarboro v. Jordon,* supra, 164 Cal. 51; *Farrelly and Hinderaker, op. cit.,* p. 76; Rowell, *The Success of the Direct Primary,* Transactions of the Commonwealth Club (1924), Vol. XIX, No. 10). They did not intend to hasten their own political demise by establishing any legally-sanctioned usage through which the existing, unfriendly party committees might endorse hostile candidates before the primary.

Not only is there an apparent absence of any established usage sanctioning pre-primary endorsements, in our view the 1913 law impliedly prohibited the practice, and the present law preserves that prohibition. Lacking any express recognition of the central committee's existence before the primary, the 1913 law carried no express

curb on their pre-primary activities. There was an implied restriction, however. The 1913 law placed the committee in "charge of the party's campaign." What was this party campaign? The committee had statutory existence only between the primary and the general elections. Hence the campaign mentioned by the statute could be nothing other than the campaign preceding the general election.

Implicit in the mandate to take charge of the general election campaign was a prohibition against any committee action which might bar it from fulfilling its statutory mission. Up to the primary there was no party campaign. There were only individual contenders for the party's nomination. The campaign for one of several primary election contenders within the same party could not be a party campaign. It could be only a campaign for a particular individual, group or faction within the party. The direction to conduct a campaign *for* the party impliedly prohibited the central committee from conducting a campaign *within* the party.

We expressed similar views recently, when we concluded that a state central committee could not promote the election of a picked slate in the presidential primary (19 Ops. Cal. Atty. Gen. 12). We stated: "Statutory authority to conduct party campaigns for party candidates necessarily excludes committee intervention among several contending primary election candidates or groups of candidates within the party. In the very nature of things such intervention can only render the committee impotent to fulfill the very duties which section 2829 [of the Elections Code] imposes upon it. Intervention on

behalf of an unsuccessful primary election candidate can only result in a loss of mutual support and cooperation as between the committee, on the one hand, and the successful candidate and his adherents, on the other. Rather than turn to the committee which opposed him before the primary, the party's candidate will turn elsewhere for support. Party factionalism and strife are engendered. The state committee, which the law has placed at the very helm of the party's general election campaign, is thus prevented by its own action from fulfilling its statutory function of party leadership. We do not mean to editoralize; we wish only to point out that the statutory duty of party leadership prohibits, by necessary implication, pre-primary support by the state central committee of one of several contending candidates or factions within the party."

These particular provisions of the 1913 law remained unchanged until 1937. That year the statutes were amended to give the county committees statutory recognition as continuing bodies from one primary election to the next. The 1937 amendment also gave expression to committee functions not previously stated in the law: "Such county central committees shall perform such other duties and services for their respective political parties as seem to be for the benefit of each party" (Calif. Stats. 1937, ch. 407, p. 1366).

Certainly the 1937 amendment was a distinct legislative recognition of committee existence and committee activity preceding the primary. In a letter to the Secretary of the Democratic County Central Committee of San Diego the then Attorney General (1947) expressed the

view that a county committee may support a candidate before the primary where he has no opposition in his own party, for example, where he is opposed only by a cross-filing candidate affiliated with another party (Letter dated November 20, 1947, LB 263-101a). That view was based upon the language of the 1937 amendment, which sanctioned committee activity "for the benefit of each party." Where, however, several candidates of the same party are contending for the party's primary election nomination, then the committee's endorsement is not for the benefit of the party. Instead, it is aimed at benefiting an individual or group within the party. We do not believe that the 1937 amendment was intended to lift the general restriction on pre-primary endorsements.

In 1939 these provisions were codified as sections 2831 and 2832 of the Elections Code. The present law preserves the implied prohibition which bars county central committees from endorsing or supporting competing candidates of the same party before the primary election.

This opinion merely confirms a belief which is widely shared among many of the county central committees of the State. Their real or supposed inability to intervene before the primary has encouraged the growth of unofficial, extra-statutory party assemblages. Some students of the elective process have advocated the "Hughes plan," which lends statutory sanction to pre-primary endorsements (see, Merriam and Overacker, Primary Elections, pp. 214-216; Harris, A Model Direct Primary Election System, State Government, May, 1951, pp. 135-138). If the present situation creates any public disadvantage, the solution must lie with the Legislature.

EXHIBIT 2

CALIFORNIA
Democratic
Party

BY-LAWS & RULES
OF THE
CALIFORNIA DEMOCRATIC PARTY

PREPARED FOR THE
EXECUTIVE BOARD MEETING
APRIL 29-30, 1983
LOS ANGELES, CA

PETER KELLY
CHAIR

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BY-LAWS OF THE DEMOCRATIC STATE CENTRAL COMMITTEE OF CALIFORNIA

ARTICLE I

NAME AND PURPOSE

Section 1. NAME

The name of this organization shall be the STATE CENTRAL COMMITTEE OF THE CALIFORNIA DEMOCRATIC PARTY.

Section 2. PURPOSE

a. These By-Laws shall govern the organization, operation, and functions of that political party known as the California Democratic Party (the Party).

b. This Committee shall elect state officers of the Party and Democratic National Committee members, shall adopt a state party platform in gubernatorial years and may adopt a proposed national platform in presidential election years, shall conduct campaigns for the party and its candidates for public office, shall appoint committees and employ staff as deemed desirable, and shall conduct such other business as the policy and program of the Party may require.

Section 3 SECTIONS

a. The Southern Section shall be comprised of the Counties of Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura.

b. The Northern Section shall be comprised of the remaining Counties in the State.

ARTICLE II

MEMBERSHIP

Section 1. MEMBERSHIP

a. This Committee shall consist of:

(1) One member for each elective public office named in Section 2(a) of this Article.

(2) Members appointed pursuant to Section 3 of this Article.

(3) Members elected by County Central Committees of the Party pursuant to Section 4 of this Article.

(4) Members elected by Assembly District caucuses pursuant to Section 5 of this Article.

(5) National Committee persons of the Party.

(6) The immediate past state officers of This Committee.

(7) The President of the California Democratic Council and of the California Federation of Young Democrats.

b. Membership shall terminate, subject to renewal, every two years and shall extend from the convening of the regular meeting of This Committee in January of the odd numbered year to the convening of the regular meeting held in the next odd numbered year, with vacancies occurring during this period filled in accordance with the provisions of Section 9 of this Article.

c. There shall be no dual memberships. A member who becomes eligible for for membership on some other grounds during his or her two-year term shall inform the Secretary of State and State Chair of the eligibility and identify the position which he or she wishes to represent.

Section 2. PUBLIC OFFICE MEMBERS

a. For purposes of this Section, the following public offices shall be referenced:

(1) Governor

(2) Lieutenant Governor

(3) Treasurer

(4) Controller

(5) Attorney General

(6) Secretary of State

(7) Members of the State Board of Equalization

(8) Members of the State Legislature

(9) Members of the United States Senate and the House of Representatives from California.

b. Any Democrat who was elected or otherwise designated to hold an office named in subdivision (a) of the section and whose term of office extends beyond January of the next odd-numbered year shall be a member of This Committee for the two-year period commencing in January of that year.

c. Any Democrat who is elected or otherwise designated to hold an office named in subdivision (a) of this section during the two-year period commencing in January of an odd-numbered year shall become a member of This Committee upon such election or designation for the remainder of the two-year period.

d. In the case of an office named in subdivision (a) of this section to which a Democrat has not been selected at the most recent primary election in which a nomination for that office was made the holdover nominee shall be a member of This Committee during the two-year period commencing in January of an odd-numbered year or until such time during that period that a Democrat is elected or designated to hold that office.

e. In the case of an office named in subdivision (a) of that section for which subdivisions (b), (c), and (d) are all inapplicable, one member shall be appointed as follows:

(1) If a state legislative office is involved, by appointment of a voter who resides in the district in question by the County Central Committee of the Party in which the district is situated (if the district is situated wholly within a single county), or in which the disqualified, deceased or resigned member resided (if the vacancy occurs in a district comprising two or more counties and is caused by disqualification or death). or in which the Republican legislator or the most recent Republican nominee for the office in question resides (if the vacancy occurs in a district comprising two or more counties and is not caused by disqualification or death).

(2) If the office of the U.S. Senate or any of the state-wide offices named in subdivision (a) of this section is

involved, by appointment by the Executive Board of This Committee.

Page 4

(3) If the office of a member of the U.S. House of Representatives is involved, by appointment by the Executive Board of This Committee of a voter who resides within the Congressional District to be represented.

f. Any member of This Committee whose membership is held pursuant to subdivision (b), (c), or (d) of this section shall be known as a "Public Office Member".

Section 3. APPOINTED MEMBERS

a. Each member identified in Section 2(b) or 2(c) of this Article shall be entitled to appoint six members, at least three of who shall be of the opposite sex; except that nominee-members for Congress and the State Assembly shall be entitled to appoint five members, at least three of whom shall be of the opposite sex.

b. Each member identified in Section 2(d) or 2(e) of this Article shall be entitled to appoint three members, at least two of whom shall be of the opposite sex; except that nominee-members for Congress and the State Assembly shall appoint two members, at least one of whom shall be of the opposite sex.

c. Appointment of members to This Committee shall be made in writing in the form prescribed in Section 8660.2 of the California Elections Code signed by the appointing member and delivered to the Secretary of the State, with copies

delivered to the State Chair of the Party. Both such deliveries shall be made no later than 5 PM of the First Monday following the regular statewide general election.

ection 4. MEMBERS ELECTED BY COUNTY CENTRAL COMMITTEES

a. Each County Central Committee of the Party shall elect members to This Committee as follows: two members for the first 5,000 registered Democrats resident in the county and one member for each 25,000 Democrats or portion thereof over 5,000.

b. The number of registered Democrats shall be as of the most recent report of registration to the Secretary of State. The Secretary of the State Committee shall secure the registration totals received by the Secretary of State, 30 days prior to the General Election, and shall forthwith notify the respective County and District Committees of the Party registrations and the allocation of members to be elected under provisions of the Election Code. These totals may be updated on the basis of registration increases received by the Secretary of State seven days prior to the General Election.

c. Elections shall be held within 35 days following the regular general statewide election.

d. Persons elected as members shall be divided as equally as possible between men and women and shall be members of the

County Central Committee as of the date of the first regular meeting of This Committee.

e. By no later than January 1 of an odd-numbered year, the County Chair shall notify the State Chair of the Party and the Secretary of the State in writing signed by him or her of the names and addresses of the persons elected to membership of This Committee.

f. County Central Committees may provide for the election of their allocation of membership on an at-large basis or by Supervisorial or Assembly Districts.

Section 5. MEMBERS ELECTED BY ASSEMBLY DISTRICT CAUCUSES

a. Each Assembly District caucus, as provided in Articles VI and VII of these By-Laws, shall elect five members to This Committee who are registered Democrats resident in the district.

b. The Assembly District caucus shall be held on the first Sunday in December following the General Election to be publicized throughout the State as Democratic Caucus Day. In the event of some major logistical problem, the caucus in a particular Assembly District may alternately be held the third Sunday in December, upon request to the State Chair. The State Chair will also call a district caucus in the third Sunday in December for any Assembly District where no action had been reported.

c. Each Assembly caucus shall elect one alternate for each member of This Com-

mittee elected. Alternates shall fill vacancies with a person of the same sex in the order based upon the number of votes received in a caucus.

d. Persons elected as members and as alnates shall be equally divided as possible between men and women.

e. Within five days following the Assembly District caucus, the persons calling the caucus shall notify the State Chair of the Party and the Secretary of State in writing signed by him or her of the names and addresses of the persons elected to membership on This Committee and their alternates.

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Section 6. NOTIFICATION OF APPOINTMENT OR ELECTION

a. The Chair of This Committee shall notify each person appointed or elected as a member of This Committee:

(1) That he or she is a member of This Committee;

(2) Of the date, time and place of the first regular meeting of This Committee;

(3) That the meeting may be attended either in person or by proxy;

(4) That every proxy shall be filed in office of the Secretary of State and/or the State Chair no later than 5 PM of the day preceding the meeting of This Committee;

(5) The proxy shall be in writing signed by the member under penalty of perjury.

b. The Chair of This Committee shall enclose, with each notification of appointment or election one copy of the proxy form sent to the member by the Secretary of State.

c. The Chair of This Committee shall provide all members with appropriate notices and forms of proxy prior to each special meeting of This Committee.

d. The Chair of This Committee shall provide all alternates with appropriate notices prior to each meeting of This Committee.

Section 7. QUALIFICATION FOR MEMBERSHIP

A person is eligible for membership on This Committee only if such person is registered as affiliated with the Party at the time of election.

Section 8. REMOVAL FROM MEMBERSHIP

a. This Committee may remove any member if, during his/her term of membership, such member affiliates with or registers as a member of another party, publicly avows preference for another party, publicly advocates that the voters should not vote for the nominee of the Party for any office, or who publicly gives support to or avows a preference for a candidate of another party or a candidate who is opposed to a candidate nominated by the Party, or fails to pay the prescribed dues as provided in Section II of this Article.

b. Removal of a member may be effected in the following manner:

(1) At least two members of the Executive Board must sign and submit to the Secretary of This Committee a written statement of charges containing the grounds for removal.

(2) The Secretary of This Committee, upon receipt of the statement of charges, must send to the accused member by timely registered mail, a copy of the statement of charges and a letter stating: that the accused member may either resign or have a hearing before the officers of This Committee, named in Article III, Section 2; that at such hearing, the accused member shall be afforded an opportunity to respond to the statement of charges and to confront the witnesses against such member; and that such member may be represented by counsel at such hearing.

(3) If the accused member does not resign, the Secretary of This Committee shall send a copy of the statement of charges to all officers of This Committee along with a notice of the hearing date.

(4) At the hearing the officers shall examine the statement of charges brought against the accused member. The accused member shall be afforded an opportunity to respond to the charges, to confront any witnesses against such members, and may be represented by counsel if desired. Such hearing shall be concluded in such fashion as to afford the accused

member due process of law. After such hearing, upon motion for removal, the accused member may be removed by a vote of not less than two-thirds of the officers present and voting.

Section 9. VACANCIES

a. A vacancy of This Committee shall be deemed to exist in the event of the appointment or election to membership of an ineligible person or whenever any member dies, resigns, becomes incapacitated to act, is removed from membership pursuant to Section 8 of this Article, ceases to be a California resident, assumes membership through another means, or ceases to be a member of the Party.

b. Vacancies shall be filled as follows:

(1) Should a member appointed to membership pursuant to Section 3 of this Article ceases to be a member for any reason specified in subdivision (a) of this Section, the vacancy shall be filled not less than three days preceding the next meeting of This Committee. The appointing member shall notify in writing the Secretary of State and the State Chair of the Party of all appointments made pursuant to this subdivision. If the original appointing person is no longer a member of This Committee or does not wish to fill the vanacy, the State Chair of This Committee shall do so and shall notify in writing the Secretary of State of the appointment made.

(2) Should a member elected to membership by a County Central Committee cease to be a member for any reason specified in subdivision (a) of this Section, notice shall be given to the County Central Committee by This Committee as soon as possible after occurance of the vacancy, and the County Central Committee shall fill the vacancy at its next meeting following the notification. The County Committee Chair shall notify in writing the Secretary of State and State Chair of the Party of the election held pursuant to this subdivision.

(3) Should a member elected to membership by an Assembly District caucus cease to be a member for any reason specified in subdivision (a) of the Section, the resulting vacancy shall be filled by the alternate who was elected for that purpose. In the event a vacancy develops for which there is no alternate, at the earliest convenience the person who called the regular biennial Assembly District caucus pursuant to Article VII, Section 1 of these By-Laws shall call a meeting of the Assembly District executive committee which shall fill the vacancy. Such person shall notify in writing the Secretary of State and the State Chair of the Party of the selection made pursuant to this subdivision.

Section 10. ASSOCIATE MEMBERS AND ALTERNATES

Associate and Alternate members of This Committee shall have the same privileges and obligations of a regular member but shall not be able to vote.

Section 11. DUES

a. Dues shall be paid by This Committee's members and the time and manner by which such dues shall be paid shall be established at the Executive Board prior to the next meeting of This Committee. Dues may also be prescribed for alternates and associate members.

b. Any member who fails to pay the prescribed dues may be removed from This Committee in the manner prescribed in Section 8 of the Article, except that payment of dues shall not be obligatory for any member to whom it constitutes an economic hardship.

c. The name of any elected or appointed member, alternate, or associate member who, without cause, fails to pay the prescribed dues shall be forwarded to the appointing member or to the chair of the electing body before the initiation of removal proceedings.

ARTICLE III
OFFICERS

Section 1. STATE OFFICERS

a. The state officers of this organization shall be a State Chair; a State Vice-Chair; a State Treasurer; a Northern Section

Chair; a Northern Section Vice-Chair; a Northern Section Secretary; a Northern Section Controller; a Southern Section Chair; a Southern Section Vice-Chair; a Southern Section Secretary; a Southern Section Controller.

b. The State Chair and the State Vice Chair shall change by sections of residence each biennium and shall be from the same section.

c. The Vice Chairs shall be of the opposite sex from the respective chairs.

Section 2. DESCRIPTION OF DUTIES

a. The *State Chair* shall be the chief executive officer and the official voice of This Committee, shall carry out the policies of This Committee, its Executive Board, and its Steering Committee, and shall carry into effect the purposes of This Committee.

b. The *State Vice Chair* shall assist the State Chair in the performance of the duties of that office. In the event of the absence of the State Chair or a vacancy in that office, the Vice Chair shall exercise all powers of the State Chair.

c. The *State Treasurer* shall be appointed by the State Chair and such appointment shall be subject to confirmation by the State Executive Board. The State Treasurer shall be a non-voting member of the State Executive Board and the State Steering Committee. The State Treasurer shall take custody of all funds directly or indirectly raised or received by this organization, shall open and maintain bank

accounts for the deposit of funds, shall make disbursements at the direction of the State Chair and shall make reports at each regular meeting of the Executive Board on receipts and disbursements, and shall comply with all state and federal reporting requirements.

d. The *Section Chairs* shall assist the State Chair in their respective sections.

The *Section Vice Chairs* shall assist the Sectional Chair of their respective sections. In the event of absence of the Section Chair, the Section Vice Chair for that section shall exercise all the power and duties of the Section Chair.

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f. *The Section Secretary* from the same section as the State Chair shall maintain all records of this organization, serve all required notices and discharge such other duties as pertain to that office. The other *Section Secretary* shall assist in the performance of such duties, and, in the absence of the Sectional Secretary from the same section as the State Chair, shall exercise the powers and duties of that officer.

g. *The Section Controllers* shall be Ex-Officio Co-Chairs of the Standing Committee on Budget and Finance, and shall assist the State Chair and Section Chairs in oversight of financial affairs of the State Committee.

Section 3. ELECTION OF OFFICERS

a. All officers, except the State Treasurer, shall be elected at the first meeting of each Democratic State Central Committee held

in January of odd-numbered years. The State Chair shall be elected on the Saturday of that meeting. All other officers shall be elected on the Sunday of that meeting.

b. The State Chair and the State Vice Chair shall be elected by the entire membership of This Committee.

c. All other officers shall be elected at sectional caucuses. There shall be a Northern Section Caucus and a Southern Section Caucus composed of all members of This Committee resident in the respective sections.

d. Candidates for offices shall file a notice of their intention to run for office with the Secretary of the Convention no later than 9 A.M. of the day of the election for that office is to be held.

e. Officers elected by the Sectional caucuses shall be presented to the entire membership for ratification. If any sectional officer fails to be ratified by the entire membership, the Sectional caucus shall hold a special meeting immediately and another officer shall be selected; said election will be subject to the same ratification process.

f. Candidates shall be allowed no more than four banners in designated areas of the auditorium, not exceeding 3 x 8 feet in size and affixed to the walls by masking tape.

g. Candidates may distribute materials in the lobbies and corridors in such manner as they choose, provided it does not interfere with normal movements of people or the conduct of convention business, including registration.

h. Following the close of nominations for officers, no additional nominations shall be permitted, except for an office for which no person has been nominated prior to the close of nominations or for which all persons nominated have withdrawn.

i. No vote for any person shall be counted unless the person has been duly nominated for, and has accepted the nomination for the office for which such vote is cast.

j. In the event only one person is nominated for any office and such person accepts the nomination, the Secretary of the meeting shall be directed to cast a unanimous ballot for such candidate at the time of the election.

k. In the event no candidate receives a majority vote on the first ballot, a run-off election (second ballot) shall be held between the two persons receiving the largest number of votes. A majority of the votes shall constitute a majority of the votes actually cast for all candidates who have been duly nominated for and have accepted the nomination for the office involved.

l. All voting for State Officers shall be by secret ballot except when there is but one candidate.

Section 4. TERM OF OFFICE

The term of office shall be for two years or until a successor is elected.

Section 5. VACANCIES

A vacancy in any office shall be filled by the Executive Board.

Section 6. REMOVAL OF OFFICERS

An officer of this organization may be removed from office for cause—that is, misconduct or neglect of duty in office as differentiated from the Party disloyalty reasons for removing a member from membership—by the following procedures:

a. At least 20 members of the Executive Board must sign and submit to the Secretary a written Statement of Charges containing the grounds for removal;

b. The Secretary, upon receipt of the Statement of Charges, must send to the accused officer by registered mail a copy of the Statement of Charges and a letter stating that the accused officer may either resign or have a hearing by way of motion for removal at the next regular meeting of the Executive Board.

c. If the accused officer does not resign, the Secretary shall send a copy of the Statement of Charges to all members of the Executive Board along with the notice for the next regular meeting of the Executive Board;

d. At said next regular meeting of the Executive Board the accused officer shall be afforded an opportunity to respond to the charges. After such hearing, upon motion for removal made by one of the signatories to the Statement of Charges, the accused officer may be removed by two-thirds (⅔) vote of all members present and voting, provided there is present and voting at least 33⅓ percent of the membership of the Executive Board.

ARTICLE IV

MEETINGS

Section 1. REGULAR MEETINGS

a. Each Democratic State Central Committee shall convene its first regular meeting (also known as its first meeting) in January after a general election on a weekend which shall be no later than the last full weekend of the month. The State Chair shall determine the precise dates, consistent with these guidelines.

b. The State Chair shall call This Committee to order at 10 A.M. on the morning of the first day of such meeting, and as soon as practicable thereafter shall cause the roll to be called from the list of certified members and proxies. The next business in order shall be the election of a temporary Chair which may be by acclamation, unless there is a contest, in which event the roll shall be called. The temporary Chair, upon election, shall appoint at once a committee on credentials and proxies, the composition and duties of which are set forth in Section 2 of Article V of these by-laws.

c. This Committee shall hold at least one meeting in each even numbered year.

Section 2. SPECIAL MEETINGS

This Committee may hold special meetings in any of the following ways: upon call of the State Chair; upon call of the Executive Board; or upon call of the State Chair within 15 days after receipt by the Chair of a written request signed by a majority of the members of This Committee.

Section 3. PLACE OF MEETINGS

a. The first regular meeting shall be held in Sacramento. Subsequent meetings of This Committee shall be held in a suitable location determined by the Executive Board or if the Executive Board does not meet, by the State Chair of the Party.

b. The State Chair of the Party shall notify the Secretary of State of the place and time of each meeting at least six weeks in advance of such meeting.

Section 4. AGENDA

a. The agenda for all regular meetings shall be determined by the Executive Board of the Party.

b. Such agenda shall include provisions for adoption of a Party Platform, election of Party officers, election of National Committee members, adoption of Party By-Laws and such other matters as may be deemed in the best interest of the Party.

Section 5. QUORUM

A majority of the credentialed members of the organization—represented either in person or by proxy—shall constitute a quorum for the transaction of business. If at any regular or special meeting of this organization, or a committee thereof, a quorum is not present, those present may adjourn from time to time until a quorum shall be present.

Section 6. PROXIES

a. Members of This Committtee may be represented at any meeting by proxy. The

person named in the proxy shall meet the same qualifications as the member; with the exception of residency requirements for statewide office holders or statewide nominees. In the event an appointee of a state legislator or member of congress is unable to attend, the appointee's proxy may be given to an otherwise qualified person of the same sex who resides either in the district of the appointing member or the appointed member.

b. All proxy appointments must be made under penalty of perjury and the name of the appointee must be handwritten by the appointing member for comparsion with the signature of the appointing member below. For the purpose of identification, the Party Staff shall maintain a signature card for each member of This Committee.

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Further, the staff may require the proxyholder to show proof of eligibility or qualification. In the case of any emergency, the member may authorize some other member of This Committee to fill in the name of the appointee, who shall be subject to the same proxy qualifications as those set forth in subsection (a) of this Section. Such authorization must be handwritten and signed by the original member. The authorized member shall also countersign the appointment. Voting by Proxy shall not be permitted with respect to standing or Special Committees of this organization.

c. Alternates elected by Assembly District Caucuses shall serve as proxies for As-

sembly District delegates unable to attend.

d. Proxies to be recognized by the Secretary of State and the Credentials Committee shall be signed by the member under penalty of perjury and shall be in the form prescribed in California Elections Code, Sec. 8740.

e. No proxy shall be recognized unless filed in the office of the Secretary of State and with This Committee not later than 5 P.M. of the day preceding the meeting of This Committee.

f. Revocation or change of proxies shall be recognized by the Credentials Committee only upon a personal request made by the member before that Committee.

Section 7. PARLIAMENTARY PRECEDURES AND VOTING

a. In all cases not provided for by law or by these By-Laws, the meeting of this organization shall be governed by *ROBERT'S RULES OF ORDER.*

b. When a voice or standing vote is taken at a meeting of This Committee, it shall be the duty of Assembly District Chairs to monitor their delegation to insure that only those eligible are voting.

c. When a roll call vote is taken, the roll call shall be conducted by the Assembly District Chairs who shall report the vote of their delegation to the Tally Clerk.

d. When voting is by secret ballot, the Secretary shall call the roll of the districts,

and as they are called, each member resident in the district shall show his or her credentials to a Tally Clerk and then deposit his or her ballot in the ballot box. More than one ballot box may be used or voting machines may be used.

e. On any demand by a member for a roll call vote, the Chair must present the demand to the floor. Upon approval by at least 250 members by a standing vote, the roll shall be called in the manner prescribed in subdivision (c) of this section.

f. During any vote, the Chair may cause the floor to be cleared of persons who are not members or alternates of This Committee or do not carry a proxy therefrom.

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Section 8. RESOLUTIONS PROCEDURES

a. Resolutions must be received by the State Chair of the Party *30 calendar days* prior to a meeting of the Committee, except as provided in sub-sections (i.), (e.) and (f.) below.

b. All resolutions must be adopted by an A.D. Committee, County Central Committee, or a Chartered Democratic Club or sponsored by 25 members of This Committee.

c. Copies of resolutions submitted according to the above procedure shall be mailed by the State Chair of the Party to all members of the Resolutions Committee prior to a meeting of This Committee.

d. All resolutions presented from the floor at a meeting of This Committee must

have the unanimous consent of the Resolutions Committee or the signatures of two hundred members of This Committee.

e. All resolutions to be presented from the floor shall be qualified by the Secretary of the convention by 5 P.M. on the day before the resolution is to be presented.

f. The sponsor of each resolution coming later than 30 days prior to the meeting of This Committee shall be responsible for providing the Secretary of the convention with sufficient copies of their resolution for each member of each Assembly District delegation.

g. All resolutions must be typed.

h. Twenty (20) copies of each resolution must be provided to the Resolutions Committee by the sponsor(s) of the resolution.

i. Inducement (e.g. Whereas) clauses shall be limited to three (3) or less, and resolve clauses shall be limited to two (2) or less.

j. Resolutions must be no longer than one (1) 8½" x 11" typewritten page.

Section 9. SEATING

Seating at meetings of This Committee shall be organized by Assembly Districts.

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Section 10. SPECIAL GROUP CAUCUSES

a. In order to implement policy guidelines for special group caucuses, This Commit-

tee may grant official recognition to a statewide caucus of ethnic minority members, or other broad elements of the membership for the purpose of assuring such groups the rights and means of participation in the policy decisions and the outreach programs of the party. Recognition shall be subject to the following provisions:

(1) A caucus membership list and caucus By-Laws are submitted for approval to the Executive Board by way of the Rules Committee.

(2) The Caucus membership list is comprised of at least one percent of the full membership of This Committee, with each person on such list affirming by signature support for the official recognition of such a caucus and affirming that he or she shares the demographic or similar identity which defines the caucus.

(3) The By-Laws are consistent with the By-Laws of this organization.

(4) Since all fundraising and expenditures of funds by the State Party, including all of its authorized groups, now require coordination under Federal and State Laws, each Special Group Caucus recognized by This Committee that proposes to solicit funds in the name of the Democratic Party consistent with the By-Laws and purposes of the Democratic Party, shall present a biennial fundraising and budget proposal, and shall submit it to the Budget and Finance Committee or the State Chair

for recommendation and approval. Those events which are not included in the main budget proposal shall be submitted on an individual basis.

(5) Quarterly financial reports shall be filed by such caucus groups with the Treasurer of the Democratic State Party to comply with law. The Treasurer shall meet with and advise the treasurer of the recognized special group caucuses in regard to the required reporting of funds.

b. Official recognition of a caucus shall extend through the remainder of the two-year term of membership on This Committee.

The Chair of an officially recognized caucus shall be a member of the Executive Board of This Committee.

d. Membership and full voting rights in an officially recognized caucus shall be open to all registered Democrats who meet the membership requirements of such caucus by-laws.

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ARTICLE V

STANDING COMMITTEES AND SPECIAL COMMITTEES

Section 1. STANDING COMMITTEES AND SPECIAL COMMITTEES

The following standing committees shall be appointed: The committee on credentials and proxies; the committee on rules; the committee on resolutions; the platform committee; the committee on affirmative action; the com-

mittee on legislation; the committee on finance and the campaign services committee. In addition, the State Chair of the Party may appoint such special committees as he or she deems appropriate.

Section 2. CREDENTIALS COMMITTEE

a. The standing committee on credentials and proxies (designated as the Credentials Committee) shall be divided as equally as possible between the Northern and Southern sections as selected by the State Chair of This Committee from among its membership. The State Chair shall also appoint the chair or Co-Chairs from among its members.

b. It shall be the duty of the Credentials Committee to approve the credentials of all persons appointed or elected to This Committee and to present a list of qualified members to the Temporary Chair of This Committee as soon as practicable. The Credentials Committee shall review and approve all proxies in accordance with Section 6 of Article IV of these By-Laws. All challenges of members or proxies shall be referred to the Credentials Committee for resolution.

c. For the purpose of the first biennial convention of This Committee, the Chair shall appoint such additional members of the Credentials Committee as may be necessary to assure that there shall be at least one member from each Senate District.

Section 3. RULES COMMITTEE

a. The standing committee on rules (designated the Rules Committee) shall con-

sist of from 15 to 25 members, selected by the State Chair of the Party. The State Chair shall also appoint the Chair or Co-Chairs of the Rules Committee from among its members.

b. It shall be the duty of the Rules Committee to keep the By-Laws and rules of This Committee consistent with the aims and policies of This Committee, to propose changes in the rules and By-Laws and special rules when necessary, and to interpret the rules and By-Laws when called upon by the State Chair or the Executive Board.

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Section 4. RESOLUTIONS COMMITTEE

a. The standing committee on resolutions (designated the Resolutions Committee) shall consist of from 15 to 25 members appointed by the State Chair, at least four of whom shall hold a public office named in Article II, Section 2(a) of these By-Laws. The State Chair shall also appoint the Chair or Co-Chairs of the Resolutions Committee from among the members of This Committee.

b. It shall be the duty of the Resolutions Committee to review all resolutions proposed to This Committee or the Executive Board in accordance with these By-Laws. The Resolutions Committee shall have authority to recommend, reject, or amend all such resolutions prior to referral to This Committee or the Executive Board. The Resolutions Committee shall establish and publish the procedures for the proposition of resolutions that are consistent with these By-Laws.

Section 5. PLATFORM COMMITTEE

a. The Platform Committee shall consist of from 15 to 25 members appointed by the State Chair, at least four of whom shall hold a public office named in Article II, Section 2(a) of these By-Laws. The State Chair shall also appoint the Chair or Co-Chairs of the Platform Committee from among the members of This Committee.

b. It shall be the duty of the Platform Committee to hold at least one hearing in each section of the state, to have a platform draft available for interested persons on the first day of the meeting of This Committee at which the platform is to be considered, to hold a final hearing during the first day of that meeting, and to present to This Committee for approval a final draft of the platform during the second day of that meeting.

Section 6. FINANCE COMMITTEE

a. The standing committee on budget and finance (designated the Finance Committee) shall consist of from 15 to 25 members selected by the State Chair, at least five of whom shall be members of the Executive Board. The State Chair shall also appoint the Chair and Co-Chairs of the Finance Committee.

b. It shall be the duty of the Finance Committee to organize, in cooperation with the officers of This Committee, activities and policies designed the financial position of the Party; to prepare in cooperation with the State Committee a State Committee operating budget for presentation to the Executive Board; and

to review and report to the Executive Board on the budgeting policies of the State Party.

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Section 7. ORGANIZATIONAL DEVELOPMENT COMMITTEE

a. The standing committee on organizational development (designated the Organizational Development Committee) shall consist of from 15 to 25 members appointed by the State Chair who shall also appoint the Chair or Co-Chairs of the committee.

b. It shall be the duty of the Organizational Development Committee to organize and supervise the educational and training efforts of This Committee, including grassroots organization and precinct level training, in cooperation with the officers of This Committee, and to recommend to the State Chair activities and policies designed to improve the organizational effectiveness of the Party.

Section 8. AFFIRMATIVE ACTION COMMITTEE

a. The standing committee on affirmative action (designated the Affirmative Action Committee) shall consist of from 15 to 25 members appointed by the State Chair, who shall also appoint the Chair or Co-Chairs of the committee.

b. It shall be the duty of the Affirmative Action Committee to implement and monitor the goal of affirmative action for selection of:

1. The delegates to all future State Conventions.

2. The members of all standing committees of the California Democratic State Central Committee.

3. The staff of the State Party.

Section 9. LEGISLATION COMMITTEE

a. The standing committee on legislation (designated the Legislation Committee) shall consist of 26 members, including 6 members appointed at-large by the State Chair and 20 additional members selected by the State Chair from nominations submitted by the Assembly District. The State Chair shall also appoint the Chair or Co-Chairs of the committee. Membership on the Legislation Committee shall be balanced as equally as possible between the sexes and between the Northern and Southern Sections, and must reflect the regional rural and urban, ethnic, and other diversities of the State's population.

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Section 9.

b. It shall be the function of the Legislation Committee to propose legislation when needed, in response to the duties and policies of the Party; to maintain a listing of all pending legislation that is of "must" and/or major concern to the Party; and to keep a record of the vote by the Democratic Party legislators on such legislative items.

Section 10. Campaign Services Committee

a. The standing committee on campaign services (designated as the Campaign

Services Committee) shall consist of from 15 to 25 members, selected by the State Chair of the Party. The committee membership shall include 2 members of the Congressional Delegation or their selected representatives, 2 members of the State Assembly and 2 members of the State Senate. The State Chair shall also appoint the Chair or Co-Chairs of the Campaign Services Committee from among its members.

b. It shall be the duty of the Campaign Services Committee:

(1) To develop goals and guidelines for State Party mail services program for state and local campaigns.

(2) To develop goals for the Campaign Task Force.

(3) To coordinate training seminars which include instruction on campaign management, issues, and financial reporting requirements.

(4) To recommend guidelines to the State Chair and Executive Board on the use of the Party bulk mail permit.

ARTICLE VI

ASSEMBLY DISTRICTS AND ASSEMBLY DISTRICT COMMITTEES

Section 1. Assembly Districts

a. The Assembly District shall be the basic organizational unit of the Democratic State Central Committee.

b. It shall be the duty of all members of this Committee to establish and maintain an

Assembly District Committee in the district in which they reside.

c. The State Chair and State Party Staff shall provide assistance as needed, especially in the decennial period of district to apportionment.

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Section 2. Assembly District Committees

a. Each Assembly District Committee shall consist of all members of This Committee resident in the district; all county committee members resident in the district; a representative resident in the District of each Democratic Club or other chartered Party organization with membership in the District; and any other registered Democrat resident in the District, as determined by the By-Laws of that Assembly District Committee.

b. The Assembly District Committee:

(1) shall elect its own officers and adopt Assembly District By-Laws consistent with By-Laws of this Committee;

(2) shall be responsible for effecting liaison with Democratic campaign organizations operating within the Assembly District and with appropriate County Committee(s);

(3) shall be responsible, in cooperation with the relevant county committee(s), for encouraging and developing the Party organization at the level of the precinct or in clusters of precincts, designated as Areas, within the Assembly District;

(4) shall carry out its organization and campaign responsibilities under the general direction of this Committee and the Executive Board of this Committee, and shall carry out the policies and programs of this Committee in the Assembly District;

(5) shall be entitled to direct representation on the Executive Board of this Committee by one vote per Assembly District.

c. The Assembly District Representative:

(1) the Assembly District Representative to the State Executive Board, together with an alternate of the opposite sex, shall be elected by the Assembly District Committee members, meeting at the conclusion of the Assembly District Caucus called for in Article II, Section 5(b) and 5(d) of these By-Laws, or at a meeting of the Committee held within the District not more than 35 days thereafter.

(2) The Assembly District Representatives must be chosen from among those persons who will be delegates to the forthcoming January State Convention.

(3) Eligibility for election as Assembly District Representatives shall also be limited to the appointed members of this Committee and those members who were elected to membership by their respective Assembly District Caucuses.

(4) Subject to the foregoing provisions, the Assembly District Chair and/or Vice Chair may be eligible.

(5) in the event that an Assembly District Committee has not been represented at two successive meetings of the Executive Board, both the Representative and the alternate shall be subject to removal from the board upon notification of the respective Assembly District Committee.

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Section 3. ASSEMBLY DISTRICT EXECUTIVE COMMITTEE

a. The Assembly District Executive Committee shall consist of all members of this Committee resident in the Assembly District, and such other members of the Assembly District Committee as may be provided for in the Assembly District By-Laws.

b. The Executive Committee shall exercise such powers and duties as may be assigned to it by the Assembly District By-Laws.

c. Prior to the Biennial Assembly District Caucus, the Executive Committee shall, on behalf of the Assembly District Committee, also perform those duties and responsibilities for the Assembly District Caucus as set forth in the provisions for Assembly District Caucuses elsewhere in these By-Laws.

ARTICLE VII

ASSEMBLY DISTRICT CAUCUSES

Section 1. ASSEMBLY DISTRICT CAUCUSES

a. Regular, biennial Assembly District Caucuses shall be held within each District in the State:

(1) within 35 days following the regular statewide election and on a day determined by the Executive Board of This Committee; and

(2) upon the call of the Democratic nominee for the Assembly at the general election or by the nominee's designee. However, if the Assembly District nominee, or, if none, the Democratic Senate nominee of the previous general election, the caucus shall be called by that person or his or her designee. If the Assembly District is the residence of more than one such person, in addition the Assembly nominee, the caucus shall be called by the person whose Senatorial District includes the greatest proportion of the registered voters of the Assembly District, or that person's designee. In the event of the failure of appropriate person to call the caucus, the chair of This Committee shall call the caucus.

b. The person calling the Assembly District Caucus and the Assembly District Committee shall make every reasonable effort to make known to all registered Democrats in the district the time, place or places, and purpose of the caucus.

Section 1.

c. The person calling the regular, biennial Assembly District Caucus or that person's designee shall preside over the caucus as temporary chair until such time as a permanent chair is elected at the caucus.

d. A registration fee for all voting participants at the Assembly District Caucus may be set by the Assembly District Executive Committee. Such fee shall not exceed five dollars.

e. A list of the names and addresses of all persons attending the Assembly District Caucus as participants shall be forwarded to the State Chair of the Party by the Assembly District Chair within one week following that caucus.

f. Each caucus participant shall be asked, on a form provided by the Assembly District Committee, to indicate his or her willingness to assume an organizational responsibility for one or more precincts within the district or to assume another specified organizational responsibility for the Party in the District. Copies of a list of the persons expressing a willingness to assume responsibility and of the responsibility they are willing to assume shall be sent by the Assembly District Chair of the Party and the Chair of the appropriate county committee(s).

g. In Assembly Districts which include more than one county, the Assembly District Executive Committee may choose to

hold sub-district caucuses simultaneously in the constituent counties. State Committee entitlements shall be prorated according to Democratic registration, with each sub-caucus entitled to elect at least one member.

h. The person calling the caucus shall be assisted by an Assembly District Caucus Committee in setting the time and place of the caucus and the procedure to be followed at the caucus. The Assembly District Caucus Committee shall consist of all members of the State Central Committee who attained such membership by operation of law or by appointment after the preceding primary election residing in the district.

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i. Any person seeking election to the State Central Committee shall, at least five days prior to the Assembly District caucus, deliver to the temporary chair a nomination paper subscribed to by the number of signers set forth in subdivision (c) of Section 6495. The nomination paper shall be in a form substantially similar to that which is set forth in Section 6494, except that the paper shall not be examined and certified by the county clerk. The county clerk shall not be required to prepare or distribute nomination papers to persons seeking election pursuant to this section.

ARTICLE VIII

EXECUTIVE BOARD

Section 1. EXECUTIVE BOARD

There shall be an Executive Board of This Committee which shall have all the powers

and duties of this organization when it is not in actual session.

Section 2. EXECUTIVE BOARD MEMBERSHIP

The Executive Board shall consist of the following members of This Committee.

a. The following public officials:

(1) All United States Senators.

(2) The Governor, Lieutenant Governor, Treasurer, Controller, Attorney General, Secretary of State and all members of the State Board of Equalization:

(3) One member of the House of Representatives from each Section, each of whom shall be selected by the members of the House of Representatives on This Committee.

(4) One member of the State Assembly from each Section, each of whom shall be selected by the members of the Assembly on This Committee.

(5) One member of the State Senate from each Section, each of whom shall be selected by the members of the State Senate on This Committee.

b. County Committee representatives elected as follows:

(1) One County Committee representative shall be elected for each 100,000 registered Democrats or portion thereof resident in the county.

(2) County Committee representatives to the Executive Board shall be

elected by their respective County Committees at their first regular meeting following the DSCC state convention in an odd-numbered year. Only DSCC members shall be eligible for such election.

(3) County Committee representatives shall be divided as equally as possible between men and women.

c. All Assembly District Representatives.

d. All National Committee Members of the Party.

e. All Officers and immediate past officers of This Committee.

f. The president of the California Democratic Council and of the California Federation of Young Democrats.

g. The chair or co-chairs of each Standing Committee of This Committee.

h. The chair of each Caucus officially recognized by This Committee pursuant to Article IV, Section 10 of these By-Laws.

Section 3. EXECUTIVE BOARD ORGANIZATION

The State Chair shall be the Chair of the Executive Board, and the State Secretary shall be the Secretary of the Executive Board.

Section 4. EXECUTIVE BOARD MEETINGS.

a. The Executive Board shall convene in regular meetings at least four times in each calendar year. Such regular meetings shall be held at such time and place

as the Executive Board may designate so long as no two consecutive meetings are held in the same Section.

b. The Executive Board may convene in special meetings in the following manner:

(1) At the call of the State Chair and at such time and in such place as he or she may designate; or

(2) Upon written request submitted to the State Chair of ten or more members of the Executive Board and at such time and in such place as they may designate.

c. Notice of the regular and special meetings shall be given by the Secretary. The Secretary shall mail the notices to each member of the Executive Board at least ten days prior to the meeting. If, upon good cause, the time is shortened, notice must be given at least three days prior to the meeting.

Section 5. EXECUTIVE BOARD VOTING

a. Members of Executive Board may vote in person or by proxy. To vote by proxy, the following conditions must be met:

(1) If the member is a representative of a County Central Committee, such member may designate in writing, as his or her proxyholder only a person who is a member or alternate of the same County Committee.

(2) Such proxyholder may vote at Executive Committee meetings only in

absence of the duly elected alternate from that Assembly District.

(3) Any other member may designate as his or her proxyholder a person who is a resident in the same Section in which the designating member resides.

b. Proxies shall be filed in writing with the Secretary of This Committee.

c. Voting by proxy shall not be permitted with respect to any Standing or Special Committee of the Executive Board.

Section 6. EXECUTIVE BOARD QUORUM

Fifty members of the Executive Board shall constitute a quorum for the transaction of business.

Section 7. EXECUTIVE BOARD RESOLUTIONS

Submission of resolutions to the Executive Board shall be in accordance with the following procedures:

a. Resolutions must be received *10 calendar days* prior to a meeting of the Executive Board by the State Chair of the Party, except as provided for in subdivision (d) below.

b. All resolutions must be signed by the author and sponsored by a member of This Committee.

c. Copies of resolutions submitted according to the above procedures shall be mailed by the State Chair to all members of the Resolutions Committee prior to an Executive Board meeting.

d. All resolutions presented from the floor must have the signatures of 50 Board members or unanimous consent of those Resolutions Committee members present in order to be considered. If unanimous consent of the Resolutions is sought, 25 copies of the Resolutions to be considered should accompany the request and be delivered to one of the co-chairs of that Committee.

e. If the resolution is presented from the floor, the sponsor(s) must submit to the Secretary sufficient copies for each member of the Executive Board present.

f. Resolutions to endorse or oppose any state ballot proposition shall require 60% majority for approval by the Executive Board.

g. The vote on such resolutions concerning state ballot propositions shall be taken up at the reguiarly scheduled Executive Board meeting immediately preecding the statewide election involved.

ARTICLE IX

STEERING COMMITTEE

Section 1. STEERING COMMITTEE

There shall be a Steering Committee of this organization which shall have the power and duty to carry out the directives and policies of the Executive Board and to exercise such powers of the Board as that Board may vest in the Steering Committee.

Section 2. STEERING COMMITTEE MEMBERSHIP

The Steering Committee shall be composed of the following members:

a. All officers of This Committee.

b. A national committeeman and a national committeewoman from each Section and chosen by their colleagues.

c. The President of the California Democratic Council.

d. The President of the California Federation of Young Democrats.

e. One member selected by and from the Executive Board membership of each of the following County Central Committees; Los Angeles County, San Francisco County, San Diego County, Alameda County, Orange County and Sacramento County.

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f. All United States Senators from California.

g. Two *additional* members, representing two additional counties in the Northern Section, selected by a caucus of those Executive Board members from the County Central Committees of the Party who are resident in the Northern Section, one of each sex.

h. Two *additional* members, representing two additional counties in the Southern Section, selected by a caucus of those Executive Board members from the County Central Committees of the Party who are resident in the Southern Section, one of each sex.

i. Five members, representing five different Assembly Districts in Northern Section, selected by a caucus of those Assembly District Representatives who are resident in the Northern Section, no less than two of whom shall be of each sex.

j. Same as (i) but with Southern Section, one of each sex.

k. One member of the United States House of Representatives, one State Senator and one member of the State Assembly from the Northern Section, and one member of the United States House of Representatives, one State Senator and one member of the State Assembly from the Southern Section, as selected by their respective colleagues for the State Executive Board in Article 8, Section 2(a) of these By-Laws.

l. The Chairpersons for each of the standing committees of this committee as designated in Article 5 of these By-Laws.

Section 3. STEERING COMMITTEE ORGANIZATION

a. The State Chair shall be chair of the Steering Committee, and the Secretary shall be secretary of the Steering Committee.

Section 4. STEERING COMMITTEE MEETINGS

a. The Steering Committee shall convene at the call of the State Chair and at such time and in such place as he or she may designate.

b. Proxy voting shall not apply to the Steering Committee.

Section 5. STEERING COMMITTEE QUORUM AND NOTICE

a A majority of the Steering Committee shall constitute a quorum, except that two-thirds of the quorum must be other than officer-members of This Committee.

b. Notice shall be given in the same manner as provided for notice of Executive Board meeting, except that upon good cause, time may be shortened to 24 hours on telephone notice.

ARTICLE X

AMENDMENT OF THE BY-LAWS

Section 1. AMENDMENT

These By-Laws may be amended at any meeting of This Committee or by the Executive Board, provided, that the Executive Board amends these By-Laws in the following manner:

a. The amendment must be submitted to the Rules Committee and filed with the Secretary at a meeting held no less than thirty days prior to the meeting at which the amendment is to be voted on.

b. A copy of the amendment shall be sent with the meeting notice to each member of the Executive Board at least ten days in advance of the meeting at which the amendment is to be voted on.

c. If the Rules Committee fails to approve a proposed amendment, such amendment may be presented from the floor with the consent of a majority of those present.

d. These By-Laws shall not be amended by the vote of less than a majority of the total number of members of the Executive Board, or two-thirds (⅔) of those members of the Executive Board voting and present at any meeting thereof, whichever is smaller.

Section 2. EFFECTIVE DATE

By-Laws or any amendments thereto shall go into effect and become effective immediately upon their adoption.

ARTICLE XI

GENERAL POLICIES

Section 1. All public meetings at all levels of the Democratic Party shall be open to all members of the Democratic Party regardless of race, color, creed, national origin, sex, age, religion, ethnic identity, sexual orientation or economic status.

Section 2. No test for membership in, nor any oaths of loyalty to, the Democratic Party shall be required or used which has the effect of requiring prospective or current members of the Democratic Party to acquiesce in, condone or support discrimination on the grounds of race, sex, age, color, creed, national origin, religion, ethnic identity, sexual orientation or economic status.

Section 3. The time and place of all public meetings of the Democratic Party on all levels should be publicized fully and in such manner as to assure timely notice to all interested persons. Such meetings must be held in places acces-

sible to all Party members and large enough to accommodate all interested persons.

Section 4. The Democratic Party, on all levels, should support the broadest possible registration without discrimination on grounds of race, sex, age, color, creed, national origin, religion, ethnic identity, sexual orientation or economic status.

Section 5. The Democratic Party shall publicize fully and in such a manner as to assure notice to all interested parties a full description of the legal and practical procedures for selection of Democratic Party Officers and representtives on all levels. Publication of these procedures shall be done in such fashion that all prospective and current members of the State Democratic Party will be fully and adequately informed of the pertinent procedures in time to participate in each selection procedure at all levels of the Democratic Party Organization.

Section 6. The Democratic Party shall publicize fully and in such a manner as to assure notice to all interested parties a complete description of the legal and practical qualifications of all officers and representatives of the State Democratic Party. Such publication shall be done in timely fashion so that all prospective candidates or applicants for any elected or appointed position within the State Democratic Party will have full and adequate opportunity to compete for office.

EXHIBIT 3

1983-84 STANDING RULES AND BYLAWS

(As Adopted 1/30/83)

with

PROPOSED AMENDMENTS

(To be Considered at the Long Beach Convention)

*NOTE: PROPOSED NEW LANGUAGE APPEARS IN ALL UPPER CASE, UNDERLINED**

Proposed Deletions are ((Double-bracketed and-lined-out))**

CALIFORNIA REPUBLICAN PARTY
1228 N Street, Suite 14, Sacramento, California 95814
(916) 443-0967

August 15, 1983

MEMORANDUM

TO: All Voting Members

FROM: Robert Laurie, Chairman Rules Committee

RE: *PROPOSED BYLAW AMENDMENTS*

Several proposed amendments to the CRP Bylaws have been submitted to your Rules Committee for consideration. On July 30th the Committee met to review and discuss these proposals. The Committee found the following six proposals worthy of further study and possible action. It is our intention to hold a second hearing on these six proposals at the beginning of the State Convention, Friday afternoon, September 30th. At that time we will take testimony on each proposal from members and associate members. The Rules Committee will then decide which of the proposals to put before the Convention as amendments to the Bylaws, for adoption Sunday, October 2nd.

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*In printed text italicized.

**Copy in double parenthesis was crossed out in original. Unable to duplicate in printed text.

1) Party Loyalty - Add language to clarify Party's right to discipline members who endorse or support non-Republicans.

2) Party Organization - provide that Party caucuses be organized along County rather than Senatorial district lines.

3) Executive Committee - Add language to clarify which organizations have ex-officio seats on the Executive Committee, and to realign County Chairmen's districts to avoid crossing regional lines.

4) Chairman - Add language to clarify the duties of the Chairman.

5) Vacancies - Substitute new language, clarifying the procedures for filling vacancies of elected officers.

6) Fiscal Year - Change the start of the Party's fiscal year from June to January to coincide with FPPC and FEC reporting cutoff dates.

1983-84 STANDING RULES and BYLAWS
(as adopted 1/30/83)

ARTICLE I
Members

Section 1.01

REGULAR MEMBERS. The Republican State Central Committee of California, also known as the California Republican Party, hereinafter called "Committee" shall be those persons delineated by the elections code of the State of California. All persons so designated as members of the Committee shall be considered regular members.

Section 1.02

ASSOCIATE MEMBERS AND YOUTH ASSOCIATE MEMBERS. Each regular member of the Committee may appoint the following: (a) Four persons at least one of whom shall be between 18 and 30 years of age. They shall

be designated as Associate Members of the Committee. (b) Two persons each of whom shall be between the ages of 16 and 21 years, and shall be a registered Republican or shall have indicated his intention to affiliate with the Republican Party upon reaching voting age. They shall be designated as Youth Associate Members of the Committee. Each appointment shall be made in writing signed by the regular member, and filed with the Committee. Associate members shall have all of the privileges, rights, and duties of other members, except that they shall be entitled to vote only when designated, qualified, and acting as a proxy for a member at any regular committee or standing committee meeting. Youth Associate Members shall have all privileges, rights, and duties of other Associate Members. However, a Youth Associate Member not registered with the Republican Party shall not be designated as a proxy and be allowed to vote. Associate Members, once appointed, shall continue to serve as Associate Members during successive terms of the Committee upon the condition that all dues required by these Bylaws are paid on a current basis. This section shall in no way affect the right of each Regular Member to make additional appointments pursuant to subsection (a) to each successive Committee.

Section 1.03

REMOVAL OF MEMBERS. The Committee or the Executive Committee may remove any appointive member pursuant to Section 9168 of the Elections Code who, during his term of membership, affiliates with or registers as a member of another party other than the Republican Party, publicly advocates that the voters should not vote for the nominee of the party for any office, or who gives support to or avows a preference for any candidate of another party other than the Republican Party, or for a candidate for partisan office who is opposed to a candidate nominated by the Republican Party or who fails to pay dues in accordance with Section 1.05. *THE COMMITTEE OR EXECUTIVE COMMITTEE MAY CENSURE OR PROVIDE REPROVAL OF ANY MEMBER WHO DURING HIS TERM OF MEMBERSHIP PUBLICLY ADVOCATES*

THE ELECTION OF, OR PUBLICLY SUPPORTS ANY NON-REPUBLICAN FOR ANY ELECTIVE OFFICE.

Section 1.03.5

Prior to such removal, except for non-payment of dues for which cause the Executive Committee may remove the member, a written statement setting forth the alleged causes for removal shall be filed with the Chairman. Within ten days the Chairman shall notify the accused member and supply him with a copy of the charges. The accused member may file a written answer to these charges within thirty days. At the conclusion of this period or upon receipt of the reply, the Chairman or the Secretary, in the event the charge is against the Chairman, shall appoint an investigating committee consisting of not less than three regular members. The investigating committee may provide for a hearing and shall provide such hearing upon request of the accused member. The committee then shall report to the Executive Committee who shall determine what action shall be taken. Any member removed by such action may appeal the decision to the next meeting of the Committee. *ANY ACTION TO REMOVE A MEMBER PURSUANT TO SECTION 1.03 MUST BE TAKEN DURING THE TERM IN WHICH THE ACT CAUSING REMOVAL OCCURRED OR DURING THE TERM IMMEDIATELY THEREAFTER. THE PERIOD OF REMOVAL SHALL BE FOR THE REMAINDER OF THE PERSON'S TERM OF APPOINTMENT.*

Section 1.04

VACANCIES. In the event of a vacancy in the position of a member of the Committee caused by the death, resignation, or otherwise, said vacancy shall be filled in accordance with the Elections Code of the State of California. The Chairman shall appoint persons to fill any vacancies not otherwise provided by law. Each County Chairman may recommend to the Chairman qualified individuals for consideration in filling vacancies in the Associate Membership. If the quota of Associates is not filled within six months following the organizational meeting, or within sixty days following a vacancy in an Associate Membership previously

appointed, the Chairman may fill such vacancy or vacancies only from the names recommended from the County or Counties where such vacancies occurred. Should any County Chairman fail to recommend qualified individuals the Chairman may fill vacancies at large not to exceed the maximum otherwise authorized.

Section 1.05.

DUES. In accordance with Section 9275 of the Elections Code, membership dues in the amount of twenty-four dollars ($24.00) per year shall be remitted by regular members to the Republican State Central Committee not more than thirty (30) days after formal notification from the treasurer of said Committee. Dues of Associate Members shall be sixteen dollars ($16.00) per year except for those Associate Members under 30 years of age whose dues shall be twelve dollars ($12.00) per year. Dues of Youth Associate Members shall be six dollars ($6.00) per year. A final ten day written notice by registered or certified mail shall be sent by the Chairman prior to removal of a member for nonpayment of dues.

ARTICLE II

Meeting of Members

Section 2.01

TIME AND PLACE OF MEETINGS. The first and organization meeting of the Committee shall be held biennially at the time and place as provided by the Elections Code of the State of Californa. Other meetings, either regular or special, shall be held either at such time and place as may be designated by the Committee, or, in the absence of such a designation, upon call of the Chairman, or in the event of his absence or inability to act, upon call of the Vice Chairman, or in the event of his absence or inability to act, upon call of any officer, which shall designate the time and place for the holding of such meeting.

Section 2.01.5

Regular sessions of the Committee shall be held no less than twice each calendar year so that the proper business and important activities of this body can be constructively and continuously pursued.

Section 2.02

NOTICE OF MEETINGS. Notice of meetings of the Committee other than the biennial organization meeting, shall be in writing, mailed to the last address of each member on file in the office of the Committee, mailing to be made at least thirty (30) days prior to the date of such meetings. If the office of the Committee has no address for such member, the mailing to the office of the Committee shall be considered as proper notice. The notice shall state the time and place of the meeting and may include an agenda of the business intended to be conducted at such meeting, provided that the inclusion of such agenda shall not limit the business to those items mentioned in the notice.

Section 2.03

QUORUM. A quorum of the State Central Committee is a majority of the entire membership represented either in person or by proxy.

Section 2.04

PROXIES. Proxies for the organization meeting of the Committee shall be in the manner designated by the Elections Code of the State of California. At any meeting of the Committee other than at the organization meeting, one individual either regular or associate member, may be designated as a proxy for only one member. An individual shall not hold a proxy for more than one member. Such proxy shall be handed to the Chairman or the Chief Administrative Officer of the Committee no later than the time designated for the convening of the meeting to which the proxy applies. The proxy may vote only if the regular member is absent from the meeting at the time of the vote and such proxy expires upon adjournment of that meeting.

Section 2.05

VOTING. Voting shall be by regular members only, in person or by proxy. At the organization meeting the temporary Chairman shall be elected pursuant to Section 9270 of the Elections Code and other officers shall be elected

pursuant to Section 9272 of the Elections Code. In cases other than the election of officers, voting shall be by voice or the Chairman may request a poll of the ((Senatorial District)) *COUNTY* delegation in which case proxies shall sit in the district of the member represented by them. A roll call may be demanded by 250 or more members in which case the roll shall be called of the regular members and such member or his proxy shall vote when his or her name is called. In the case of the election of officers, voting shall be by BALLOT.

ARTICLE III

The Executive Committee

Section 3.01

NUMBER OF EXECUTIVE COMMITTEE. The Chairman shall appoint an Executive Committee consisting of not more than one hundred (100) regular members, including, but not limited to, the following:

a. All elected officers of the Republican State Central Committee.

b. One person from each Senatorial District not otherwise represented.

c. The elected or nominated constitutional office for Governor, Lieutenant Governor, Attorney General, Secretary of State, Controller and Treasurer.

d. California's Republican National Committee Members

e. California's elected or nominated Republicans for the United States Senate.

f. Two members to be selected by the California Republican Congressional delegation.

g. Two members to be selected by the Republican State Senators.

h. Two members to be selected by the Republican Assemblymen.

i. 16 County Chairmen, one each to be selected by the County Chairmen of the following districts:

1. Northwest Counties: Del Norte, Humboldt, Lake, Mendocino, and Sonoma.
2. Upper Central Valley: Butte, Glenn, Shasta, Siskiyou, Tehama and Trinity.
3. Upper Northeast: Lassen, Modoc, Plumas, and Sierra.
4. Sacramento Valley: Napa, Sacramento, Solano, and Yolo.
5. South Sacramento Valley: Colusa, Nevada, Placer, Sutter, and Yuba.
6. San Joaquin Mother Lode: Alpine, Amador, Calaveras, El Dorado, ((Mono)), San Joaquin, Stanislaus, and Tuolumne.
7. Central California: Fresno, Kings, Madera, Mariposa, Merced, and Tulare.
8. Bay Area: Alameda, Contra Costa, Marin, and San Francisco.
9. South Bay Area: San Benito, San Mateo, and Santa Clara.
10. South Coast: Monterey, ((San Luis Obispo)), and Santa Cruz.
11. Tri-County: *SAN LUIS OBISPO*, Santa Barbara and Ventura.
12. Los Angeles Basin: Los Angeles.
13. Southeast Area: ((Inyo, Kern)), Riverside, and San Bernardino.
14. Southern: Imperial, Orange, and San Diego.
15. ((Two additional County Chairmen to be selected by the Chairman.))
15. *EASTERN SIERRA: INYO, KERN AND MONO.*

16. *ONE ADDITIONAL COUNTY CHAIRMAN TO BE SELECTED BY THE CHAIRMAN.*

j. ((The State Presidents of the California Federation of Republican Women, the California Republican Assembly, the California Young Republicans, the United Republicans of California, the California Republican League, the California College Republicans, and the President, Vice President, Secretary, and Treasurer of the Association of Republican County Central Committee Chairmen.))

j. *THE PRESIDENT OR CHAIRMAN, AS THE CASE MAY BE, OF EACH STATEWIDE, VOLUNTEER ORGANIZATION CHARTERED BY THE STATE CENTRAL COMMITTEE OR BY THE REPUBLICAN NATIONAL COMMITTEE AND APPROVED FOR THIS PURPOSE BY THE EXECUTIVE COMMITTEE OF THE STATE CENTRAL COMMITTEE, AND THE PRESIDENT, VICE PRESIDENT, SECRETARY, AND TREASURER OF THE ASSOCIATION OF REPUBLICAN COUNTY CENTRAL COMMITTEE CHAIRMEN.*

k. The elected Associate Representative.

Section 3.02

EX-OFFICIO MEMBERS. All Republican legislators and County Central Committee Chairmen not designated in Section 3.01 shall be ex-officio members of the Executive Committee, but shall not be counted in constituting a quorum and shall not have the right to vote.

Section 3.03

POWERS AND DUTIES OF THE EXECUTIVE COMMITTEE. The Executive Committee is hereby granted all powers and duties of the Committee as provided by law.

Section 3.04

RULES AND REGULATIONS OF THE EXECUTIVE COMMITTEE. The Executive Committee may adopt such additional rules and regulations as it may deem necessary and proper which are not inconsistent with the Standing Rules and Bylaws.

ARTICLE IV

Officers

Section 4.01

OFFICERS. The following shall be the elected officers of the Committee to serve for the two year term following the organization meeting or until their successors be elected and qualified: Chairman, State Vice Chairman, Regional Vice Chairman for Northern California, Regional Vice Chairman for Central California, Regional Vice Chairman for Southern California, Secretary, First Assistant Secretary, Second Assistant Secretary, Treasurer, and Assistant Treasurer. In addition, the following shall be honorary officers of the Committee: The Republican National Committee Members for California, and the President of the Association of the Republican County Central Committee Chairmen of California. The Committee may appoint such additional subordinate officers as it may deem necessary from time to time. The office of the Chairman and State Vice Chairman shall rotate between the North and the South in accordance with provisions of the Election Code of California. This section to be effective as of the organization meeting in 1979.

Section 4.01.5

For the purpose of electing Regional Vice Chairmen, Northern, Central, and Southern California shall be defined as follows:

Northern California shall consist of the following counties: Alamedo, Butte, Colusa, Contra Costa, Del Norte, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo and Yuba.

Central California shall consist of the following counties: Alpine, Amador, Calaveras, El Dorado, Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, Mono, San Joaquin, ((San Luis Obispo)), Stanilaus, Tulare, and Tuolumne.

Southern California shall consist of the following counties: Imperial, Los Angeles, Orange, Riverside, San Bernardino,

San Diego, *SAN LUIS OBISPO,* Santa Barbara and Ventura.

Each region may caucus to nominate a candidate for Regional Vice Chairman, and membership in such caucus shall be limited to regular members. Notwithstanding the action of any regional caucus, additional nominations may be made from the floor.

Section 4.01.6

A Sergeant at Arms shall be appointed by the Chairman.

Section 3.05

MEETINGS OF THE EXECUTIVE COMMITTEE.

a. The Executive Committee shall meet at such time and place as is designated in any call for a meeting issued by the Chairman or, in the absence or disability of the Chairman, the State Vice Chairman.

b. Notice of Meetings. Any call and notice for a meeting of the Committee issued as prescribed in Section 2.02 shall be automatically and without specific designation therefore, considered as, and shall constitute, a call and notice for a meeting of the Executive Committee, subject to the understanding that in such event the Executive Committee meeting will be convened only if a quorum of the full Committee is not present. In addition to the above, notice of a meeting of the Executive Committee may be given at any time by the Chairman or the State Vice Chairman to the members of the Executive Committee in the same manner as giving them a notice of a meeting of the Committee, except that it shall be given not less than five (5) days prior to such meeting.

c. Quorum. The presence in person of thirty (30) members of the Executive Committee shall constitute a quorum for the purpose of transacting business.

d. Voting. Voting in the Executive Committee shall be in person only, and voting by proxy shall not

be permitted. No person appointed pursuant to this article shall have more than one (1) vote.

Section 3.06

OFFICERS OF THE EXECUTIVE COMMITTEE. The regularly elected officers of the Committee shall likewise be the officers of the Executive Committee.

Section 3.07

VACANCIES. Any vacancies occurring in the Executive Committee through resignation, death, or otherwise, shall be filled by appointment in the same manner as the appointment was made of the member whose position has become vacant.

Section 4.02

DUTIES OF OFFICERS.

a. Chairman. The Chairman shall be the first executive officer of the Committee and shall have general supervision, direction, and control of the business and activities of the Committee and over the officers of the Committee. He shall preside at all meetings. The Chairman is authorized and empowered to make such appointments as may be required or permitted under the law to be made by the Chairman or by the Committee. The Chairman is authorized and empowered to accept resignations submitted by members and associate members of the Committee, and to fill vacancies as provided for herein. With regard to the organizational meeting, vacancies shall be filled within the period as provided by Section 9165 of the Elections Code; otherwise, within a period of thirty (30) days from the time when such appointment can first be made. The Chairman shall carry into effect, or cause to be carried out, instructions and orders of the Committee and perform such other duties as may be prescribed by law, rules,

or regulations, or by the Committee. In carrying out his duties, the Chairman may select and appoint an Executive Director or such other assistant or assistants, to whom he may delegate ministerial duties appertaining to his office. The Chairman shall be an ex-officio member of each standing committee, but shall not be counted for purposes of constituting a quorum. *THE TERM "CHAIRMAN" AS REFERRED TO IN THESE BYLAWS SHALL MEAN CHAIRMAN OF THE REPUBLICAN STATE CENTRAL COMMITTEE OF CALIFORNIA.*

b. State Vice Chairman. In the absence or disability of the Chairman, the State Vice Chairman shall perform all of the duties of the Chairman, and when so acting shall have the powers of, and be subject to, all of the restrictions placed upon the Chairman. The State Vice Chairman shall have such other powers and perform such other duties as from time to time may be prescribed by the Committee.

c. Regional Vice Chairmen. The Regional Vice Chairmen shall act for and on behalf of the Chairman in connection with the County Central Committees of their Region, subject to the direction of the Chairman, and shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Chairman or the Committee.

d. Secretary and Assistant Secretary or Secretaries. The Secretary shall be responsible for the keeping of the records of the membership and the proceedings of the Committee. The Assistant Secretary shall assist the Secretary in his duties and perform the duties of the Secretary in the absence or disability of the Secretary. The Secretary and the Assistant Secretary shall each have such other powers and perform such other duties as from time to time may be prescribed for them by the Committee.

e. Treasurer and Assistant Treasurer. The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of all of the properties and business transactions of the Committee, including its assets, liabilities, receipts and disbursements. The Treasurer shall receive, have custody of, and be responsible for all money belonging to the Committee. The Treasurer shall deposit all money and other valuables in the name of, and to the credit of, the Committee with such depository as may be designated by the Committee. He shall disburse the funds of the Committee in accordance with the budget or as may be ordered by the Committee. The Treasurer shall be responsible for the preparation and maintenance of a manual of financial policies and procedures to be approved by the Budget and Expenditure Committee. The books of account shall at all reasonable times be open for inspection by all Committee members. Upon request of the Chairman, or the Committee, the Treasurer shall render a report and account of all of his transactions as Treasurer, and of the financial condition of the Committee. At the end of his term of office, the treasurer shall transfer to his successor all of the Committee's assests, accounts and records under his control and obtain a receipt therefor from his successor. The Assistant Treasurer shall assist the Treasurer in the performance of his duties, and in the absence or inability of the Treasurer to act, shall perform the duties of the Treasurer.

The Treasurer and the Assistant Treasurer shall have such duties as may be prescribed by the Committee.

Section 4.03

ELECTION OF OFFICERS. The officers shall be elected at the organization meeting of the Committee as provided by the Elections Code of the State of California.

Section 4.04

VACANCIES. ((Vacancies occurring by reason of resignation, death, or otherwise as to any elective office of the Committee shall be filled at the next meeting of the Committee, or Executive committee following the creation of the vacancy provided, however, the Chairman may appoint an acting officer to fill the vacancy until the next meeting of the Committee or the Executive Committee.))

a. *SHOULD A VACANCY OCCUR IN THE OFFICE OF THE CHAIRMAN, BY REASON OF RESIGNATION, DEATH OR OTHERWISE, THE VICE CHAIRMAN SHALL SUCCEED AUTOMATICALLY TO THAT OFFICE; PROVIDED HOWEVER, THE VICE CHAIRMAN SHALL SERVE ONLY AS ACTING CHAIRMAN FOR THE REMAINDER OF THE TERM AND SHALL NOT BE PROHIBITED FROM BEING ELECTED TO THE OFFICE OF CHAIRMAN IN THE FOLLOWING TERM.*

b. *SHOULD A VACANCY OCCUR IN ANY ELECTIVE OFFICE OTHER THAN CHAIRMAN, BY REASON OF RESIGNATION, DEATH OR OTHERWISE, THAT VACANCY SHALL BE FILLED BY APPOINTMENT BY THE CHAIRMAN AND CONFIRMED BY THE EXECUTIVE COMMITTEE, SUCH OFFICER SHALL HAVE THE POWER TO ACT IN CARRYING OUT THE DUTIES OF HIS OFFICE PENDING HIS CONFIRMATION.*

Section 4.05

REMOVAL OF OFFICERS. The Committee or the Executive Committee may remove from office any elected officer who publicily endorses any candidate other than himself for election prior to any contested primary election, or who allows the name of the Committee to be used to imply such endorsement.

ARTICLE V

Standing Committees other than the Executive Committee & the Budget & Expenditure Committee

Section 5.01

STANDING COMMITTEES CREATED. Standing Committees, other than the Executive Committee and the Budget and Expenditure Committee, are hereby created and shall consist of the following:

a. Committee on Proxies & Credentials
b. Rules Committee
c. Resolutions Committee
d. Finance Committee
e. Committee on Volunteer Organization
f. Cal. Plan Committee
g. Research Committee
h. Speakers Bureau
i. Veterans Committee
j. Platform Committee
k. Political Education Committee
l. Precinct Organization Committee
m. County Central Committee Chairmen's Committee
n. California State Congressional Target Committee
o. Other such special committees as the Chairman may feel necessary or advisable for the conduct of the business of the RSCCC.

Section 5.02

APPOINTMENT AND TERM OF COMMITTEES. At the commencement of each biennium, the new Chairman of the Committee shall, as soon as reasonably convenient after the election, appoint the standing committees, the members of which shall serve for a two-year term or until their successors are elected and qualified. The Committee on Proxies and Credentials shall consist of one regular member from each Senatorial District and as many associate members as the Chairman shall determine. All other standing committees shall consist of at least five (5) regular members, and as many associate members as the

Chairman shall determine. The membership of the California State Congressional Target Committee shall be chosen in the manner prescribed in Section 5.03 (g).

Section 5.03

DUTIES OF STANDING COMMITTEES. The duties of the standing committees shall be as follows:

a. PROXIES AND CREDENTIALS COMMITTEE. The Proxies and Credentials Committee, at each meeting of the Committee or of the Executive Committee, shall review the credentials of all members present. It shall review any proxies that have been presented for use at a meeting of the Committee and, at the request of the Chairman, shall report on the standing and status of all members and their proxies present and whether or not there is sufficient attendance to constitute a quorum.

b. RULES COMMITTEE. The Rules Committee shall consider proposed amendments to the standing rules and Bylaws as provided in Article XI.

c. RESOLUTIONS COMMITTEE. The Resolutions Committee at all meetings of the Committee or of the Executive Committee, shall receive, consider, and report on all general resolutions proposed for adoption by the meetings. No such resolutions shall be considered at the meeting until after a favorable report thereon by the Resolutions Committee, except by a two-thirds (2/3) vote of the voting members present. The Resolution Committee may, at its discretion, initiate and prepare resolutions and report the same to the members for consideration.

d. FINANCE COMMITTEE. The Finance Committee shall have the authority to develop, put into effect, and carry out plans to raise funds to support the activities of the Committee. For such purpose it shall prepare and submit for approval

a budget of proposed receipts and expenditures. The Treasurer shall be an ex-officio member of the Finance Committee. The Treasurer is authorized to pre-audit and approve expenditures of funds for the activities of the Committee included within the approved budget or within expenditures for other purposes which have been approved by the Committee. Checks in payment of duly authorized expenditures drawn against the funds of the Committee shall be signed by any two of the following: the Chairman, any Vice Chairman, the Secretary, the Assistant Secretary, the Treasurer, the Assistant Treasurer, or by one such officer and one of the following: the Executive Director or Administrative Officer. Each State Committee member, including each Associate Member, is requested to support the finance activities so approved. and for this purpose is requested to use his best efforts to raise contributions.

e. COMMITTEE ON VOLUNTEER ORGANIZATIONS. The Volunteer Organizations Committee shall cooperate with the various Republican volunteer organizations in developing the greatest possible utilization of their energies on behalf of the Republican Party. In the event that a volunteer organization petitions the Committee under Section 12301 of the Elections Code of the State of California, this committee shall conduct an investigation and report to the Chairman.

f. CALIFORNIA PLAN COMMITTEE. The California Plan Committee, herein designated as the "California Plan" is authorized and empowered to serve as an independent agency for the purpose and with the duty of conducting the election campaign and/or campaigns, including the financing thereof, for and on behalf of Republican nominees for election to any state, county, or

local partisan office, specifically excluding, however. all nominees and candidates for election to any federal office or for election as presidential or vice-presidential elector. The Treasurer of the Committee shall serve as the treasurer of the California Plan and shall receive, disburse, and keep all monies contributed or disbursed for campaign purposes, segregating the same from the funds of any other campaign agencies of the Republican Party and from other funds of the Committee. The California Plan shall prepare and file a campaign statement in accordance with law, which statement may be filed independently of or as a separate part of the filing of the Committee.

g. CALIFORNIA STATE CONGRESSIONAL TARGET COMMITTEE. The California State Congressional Target Committee shall be composed of all incumbent Republican Congressmen in the California Delegation, the Chairman and State Vice Chairman of the Republican State Central Committee, the National Committeeman and Committeewoman from California. and citizen members, one from the districts established under the provisions of Article III, Section 3.01(i). Citizen members to be selected by mutual agreement between the Chairman and the Campaign Chairman of the Congressional delegation. In the event that a mutual selection is not made from one or more of the districts, the County Chairman representing the district(s) on the RSCCC Executive Committee shall be automatically appointed to this committee. The Target Committee will work with the officers of the RSCCC in the establishment of a fund raising program compatible with State Committee programs. A separate bank account, in the name of the RSCCC, will be established to insure that funds raised for Congressional campaign purposes are so dis-

bursed, and that their disbursement complies with all federal election laws. The signatures on said account will be an appointee of the Chairman of said Committee, and an appointee of the RSCCC Chairman.

h. PLATFORM COMMITTEE. The Platform Committee shall draft a platform as required by the California Election Code. The Committee shall submit a draft platform to the general membership for adoption, or recommend that the existing platform be re-adopted in its existing form at the Fall meeting of the State Committee in general election years.

1. The Platform Committee shall consist of the following members:

   A. The Chairman of the State Central Committee who shall serve as Chairman of this committee.

   B. All Vice Chairmen. the Secretary and the Treasurer of the State Committee.

   C. The Floor leaders, Caucus Chairmen, and Whips of the California State Assembly and Senate.

   D. The Speaker of the State Assembly and the President Pro Tem of the State Senate, if these offices are held by Party members.

   E. Incumbent State Constitutional officers, if they are members of the Party.

   F. Incumbent United States Senators from California, if they are members of the Party.

   G. The Delegation Chairman of the U.S. House of Representatives, or his designee.

H. The National Committeeman and National Committeewoman.

I. The President of the County Central Committee Chairmen's Association, or his designee.

J. The incumbent, or if none, the nominee for each Assembly and Senatorial District.

K. One member from each Assembly District selected in the ((Senatorial District)) *COUNTY* caucus at the organizational meeting.

2. Duties of the Platform Committee:

A. Duties of the committee shall be to select a drafting committee of one member for each four members of subsection h.1., paragraphs A through I, and one member for each four members from paragraph J, and one member for each four members from paragraph K.

B. The drafting committee shall meet and draft a platform which shall be presented to the full Platform Committee no later than July 1 for its consideration and action.

C. The Platform committee shall present the recommended platform to the full Committee for its consideration and approval at the Fall Meeting.

Section 5.04

MEETINGS OF COMMITTEES. Meetings of the standing committees shall be on call of the Chairman or Vice Chairman of the Committee or Chairman of the Standing Committee at such time, place, and on such notice as they may designate.

Section 5.05

VACANCIES ON STANDING COMMITTEES. In the event a vacancy on any standing committee is created by death, resignation or other cause, the Chairman shall, as soon as reasonably possible, fill said vacancy by appointment. Likewise, at any meeting of any standing committee, if a quorum of the members regularly appointed thereto be not present, the Chairman of the Committee may make temporary additional appointments thereto to serve only during and for the purposes of such meeting.

Section 5.06

REPORTS OF COMMITTEES. All standing Committees may report on any subject within the scope of that committee at each meeting of the Committee, and upon designation of the Chairman, at each meeting of the Executive Committee, and such other times as the Chairman of the Committee may direct.

ARTICLE VI

Office and Headquarters

Section 6.01

The Chairman of the Committee shall designate the Office and Headquarters of the Committee and such additional offices for the Committee as, in his opinion, may be necessary and proper.

ARTICLE VII

Order of Business

Section 7.01

At each meeting of the Committee or the Executive Committee the order of business shall be as follows:

1. Call to Order
2. Prayer
3. Pledge of Allegiance

4. Items on the Agenda
5. Committee Reports
6. Consideration of Old Business
7. Consideration of New Business
8. Announcements
9. Adjournment

ARTICLE VIII

The Committee shall hold harmless its members and officers from any liability, including legal representation, because of any activity on behalf of the Committee in performance of his or her duties, except acts of gross neglect.

ARTICLE IX

Parliamentary Rules

Section 9.01

The Chairman of the Rules Committee, or some member of such Committee designated by such Chairman, shall act as parliamentarian of each meeting of the Committee or Executive Committee.

Section 9.02

In all cases not provided for by the Elections Code or the Standing Rules and Bylaws of the Committee, the authority shall be Roberts' Rules of Order, Newly Revised.

Section 9.03

When an action is under debate or before the Committee, no amendment shall be in order when such amendment relates to a different subject or is intended to accomplish a different purpose than the original action. No motion or proposition on a subject different from that under consideration shall be admitted as an amendment.

Section 9.04

No motion, either oral or written, shall be adopted until the same shall be seconded and distinctly stated to the Committee by the Chairman.

Section 9.05

When an action is under debate or before the Committee, no motion shall be received but the following which shall take precedence in the order named:

First	—To adjourn
Second	—To recess to a time certain
Third	—To lay on the table
Fourth	—For the previous question
Fifth	—To set as a special order
Sixth	—To postpone indefinitely
Seventh	—To refer to or re-refer
Eighth	—To amend.

Section 9.06

Any standing rule or Bylaw of the Committee or the Executive Committee may be suspended temporarily by a vote of ⅔ of the members present; provided, that such temporary suspension shall apply only to the matter under immediate consideration, and in no case shall it extend beyond an adjournment.

ARTICLE X

Fiscal Affairs

Section 10.01

FISCAL YEAR. The Committee's fiscal year shall commence on the first day of ((July)) *JANUARY*.

Section 10.02

FISCAL YEAR BUDGETS

a. The chairman shall submit to the Budget and Expenditure Committee for approval a complete and detailed bi-annual budget, setting forth all pro-

posed expenditures and estimated revenues. The bi-annual budget shall provide that expenditures shall not exceed revenues.

b. The budget shall show revenue and expenditures by month.

c. The budget may provide a contingency fund of an amount no greater than $100,000 that may be disbursed by the Chairman without prior approval of the Budget and Expenditure Committee.

d. The Chairman shall submit the budget to the Budget and Expenditure Committee no later than the May 15th following election as Chairman.

e. The Budget and Expenditure Committee shall approve a budget no later than the June 30th following the election of the Chairman.

f. All amendments and modifications to the approved bi-annual budget shall require approval from the Budget and Expenditure Committee except to the extent such authority to approve modifications has been delegated to the Executive Committee of the Budget and Expenditure Committee.

Section 10.03

BUDGET AND EXPENDITURE COMMITTEE

a. Membership. The Budget and Expenditure Committee shall consist of seventeen (17) members composed of seven (7) standing members and ten (10) appointed members.

1. The standing members shall be:

(a) The Chairman

(b) The Vice Chairman

(c) The Treasurer

(d) The Finance Chairman

(e) The Republican Senate Leader of the California Senate or a Senator designated by the Leader

(f) The Republican Assembly Leader of the California Assembly or an Assemblyman designated by the Leader

(g) The Chairman of the California Republican Congressional Delegation or a Congressman designated by the Delegation Chairman

2. The appointed members shall be as follows:

(a) The Chairman shall have four (4) appointments

(b) The Vice Chairman shall have three (3) appointments

(c) The Finance Chairman shall have three (3) appointments

3. The Chairman shall appoint from the members of the Budget and Expenditure Committee a Chairman of the Budget and Expenditure Committee who shall serve at the pleasure of the Chairman.

b. Duties. The duties of the Budget and Expenditure Committee are as follows:

1. Approve the budget and necessary modifications.

2. Monitor compliance with the budget, assuring that actual or anticipated expenditures do not exceed actual or anticipated revenues.

3. Establish an appropriate system of financial controls, including designation of persons authorized to approve expenditures and monitor the effectiveness of such controls.

4. Monitor compliance with financial reporting laws.

5. Report to the Executive Committee of the State Central Committee departures from approved budgets and established financial procedures.

c. Meetings. The meetings of the Budget and Expenditure Committee shall be as follows:

1. It shall meet at least twice a year at a time and place within California designated by the Chairman of the Budget and Expenditure Committee.

2. At least one meeting shall be held no later than June 30th of each year.

3. Additional meetings may be called by the Chairman, the Chairman of the Budget and Expenditure Committee, or any three members of the Budget and Expenditure Committee who submit to the Chairman of the Budget and Expenditure Committee a written request for such meeting, in which case, within three days from date the request is received, the Chairman shall issue a notice of a meeting of the Budget and Expenditure Committee to be held within the next thirty (30) days.

4. The Chairman of the Budget and Expenditure Committee shall give written notice of any meeting to all members of the Budget and Expenditure Committee at least 20 days prior to the date of such meeting unless notice of such meeting is waived by a quorum of the Budget and Expenditure Committee.

5. Nine (9) of the Budget and Expenditure Committee members constitute a quorum for the transaction of business.

6. Every act or decision done or made by a majority of the Budget and Expenditure Committee members present at a meeting duly held at which a quorum is present is the act of the Budget and Expenditure Committee.

d. Subcommittees.

1. There shall be an Executive Committee of the Budget and Expenditure Committee consisting of the Chairman, the Vice Chairman, the Finance Chairman, Chairman of the Budget and Expenditure Committee and Chairman of the Financial Controls Subcommittee. The Executive Committee of the Budget and Expenditure Committee shall have authority, on behalf of the Budget and Expenditure Committee, to approve increases or decreases of individual budget expenditures by an amount no greater than 10 percent of the aggregate expenditures approved by the Budget and Expenditure Committee. However, the aggregate of all modifications made by the Executive Committee may not increase the aggregate budget expenditures approved by the Budget and Expenditure Committee.

(a) The Chairman of the Budget and Expenditure Committee may call a meeting of the Executive Committee of the Budget and Expenditure Committee at such time and place within California as he designates.

(b) The Chairman of the Budget and Expenditure Committee shall give written and/or telephonic notice of any such meeting to all members of the Executive Committee of the Budget and Expenditure Committee at least 5 days prior to the date of such meeting unless notice of

such meeting shall be waived by a quorum of the Executive Committee of the Budget and Expenditure Committee.

(c) Three (3) of the members constitutes a quorum of the Executive Committee of the Budget and Expenditure Committee to transact business. Every act or decision done or made by a majority of such Executive Committee members present at a meeting duly held at which a quorum is present is the act of such Executive Committee.

(d) The Chairman of the Budget and Expenditure Committee shall inform, in writing, the members of the Budget and Expenditure Committee within 15 days of any meeting of the Executive Committee of the Budget and Expenditure Committee in which approval was given to changes in the budget.

2. The Chairman of the Budget and Expenditure Committee may appoint a Subcommittee on Financial Controls to assist in monitoring the effectiveness of financial controls.

Section 10.04

FINANCIAL REPORTS

a. The Chairman shall submit to the Executive Committee of the Budget and Expenditure Committee by the end of the following month a written report comparing actual revenue and expenditures to budgeted revenue and expenditures for the preceding month.

b. The Chairman shall submit to the Budget and Expenditure Committee a semi-annual written report comparing actual revenue and expenditures to budgeted revenue and expenditures for the preceding six-month period. Such report shall

be submitted no later than sixty days following the close of the period.

c. The Chairman shall submit to the Budget and Expenditure Committee for its approval the name of the CPA firm which firm shall render an annual audit of the financial statements. Such audit report shall be submitted to the Budget and Expenditure Committee no later than September 30th of each year.

d. The Treasurer shall prepare and file all financial reports required by federal, state and local law, including payroll tax returns, income tax returns, and campaign reports.

Section 10.05

CONTROLLER. The Chairman shall employ full time an accountant who shall assume the duties and functions of a Controller and shall assist the Chairman in preparing all budgets and financial reports, maintain all accounting records and assist the Treasurer in preparing all reports required by law.

ARTICLE XI

Amendments

Section 11.01

Proposed amendments to the Standing Rules and Bylaws shall be submitted in writing to the Chairman, who shall refer them to the Rules Committee for consideration. The Rules Committee shall make a report on such proposed amendments to the next meeting of the Committee. Following a favorable report by the Rules Committee, such amendments may be approved by a majority vote of those voting or, in the absence of a favorable report by the Rules Committee, such amendments may be adopted by a two-thirds (⅔) vote of the voting members present. The Executive Committee may act upon such proposed amendments only under the provisions of Section 3.05(b).

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Attorneys for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, et al.,

Defendants.

ORDER EXTENDING TIME AND CONTINUING HEARING DATE

(March 18, 1984)

By leave of Court, a telephonic hearing on defendants' motion for an extension of time, from March 16, 1984, to April 9, 1984, within which to file their opposition to plaintiffs' motion for summary judgment was conducted on

March 12, 1984. Philip Hickok, Deputy County Counsel for the County of Los Angeles, participated on behalf of defendant, Robert Philibosian, District Attorney for Los Angeles County; Richard D. Martland, Chief Assistant Attorney General for the State of California; N. Eugene Hill, Assistant Attorney General; and Geoffrey L. Graybill, Deputy Attorney General participated on behalf of all other defendants who have not disclaimed involvement in the above-entitled action; James J. Brosnahan and Paul Dieseth participated on behalf of plaintiffs.

Defendants requested that the fourteen (14) days allowed by Local Rule 220-3 within which to file their opposition to defendants' motion for summary judgment be extended to thirty-five (35) days on the grounds that plaintiffs' moving papers are voluminous (roughly 350 pages of documentation, including 50 pages of legal memorandum, 25 declarations and 19 exhibits) and that response thereto by defendants on both legal and factual issues could not be accomplished without information available only through sources outside of government because none of the defendants have been involved in regulating or monitoring political party activities or prosecuting anyone in plaintiffs' circumstances in connection with participation in political activity. Defendants represented that the additional twenty-one (21) days are necessary to gather information needed to respond which is not available from the records and files of state and local government and to prepare adequate legal memoranda based on such information.

Plaintiffs opposed the motion on the ground that they desire resolution of the issues prior to the California primary elections to be held in June 1984.

Having heard the arguments of counsel and GOOD CAUSE appearing therefor, it is hereby ORDERED that:

1. Defendants' opposition to plaintiffs' motion for summary judgment may be served and filed by mail on or before March 26, 1984;

2. Plaintiffs' reply to defendants' opposition may be served and filed by mail on or before April 2, 1984;

3. The hearing on plaintiffs' motion for summary judgment and defendants' motion to dismiss shall be held on April 9, 1984, at 10:30 a.m. unless the Court by subsequent order sets another date which shall be no earlier than April 6, 1984;

4. After the hearing defendants may seek leave to introduce evidence into the record which was not available to them when they filed their opposition to plaintiffs' motion for summary judgment.

DATED: March 16, 1984.

/s/ MARILYN HALL PATEL
Judge of the United States
District Court

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599 MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, et al.,

Defendants.

ORDER RE DISCLAIMING DEFENDANTS

(March 2, 1984)

The Defendants William A. O'Malley, District Attorney of Contra Costa County; John M. Meehan, District Attorney of Alameda County; and Michael Nail, District Attorney of Solano County having answered by way of disclaimer and having requested that their counsel be excused from attendance at proceedings in this case and that the other parties be relieved from serving said defendants with any further notices or papers in this action save and excepting matters by which any monetary recovery is sought against any of said defendants or any of the Counties served by said defendants; and counsel for the plaintiffs and for the other defendants in this case having agreed to such request,

IT IS HEREBY ORDERED

1. Defendants O'Malley, Meehan, and Nail and their respective Counsel are excused from attendance at further proceedings in this action.

2. The parties to this case are excused from serving defendants O'Malley, Meehan and Nail and their respective counsel with any notices, or other papers in this action save and excepting matters by which any money recovery is sought against any of said defendants or any of the Counties served by them.

Dated: March 2, 1984.

/s/ MARILYN HALL PATEL
United States District Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC
CENTRAL COMMITTEE, et al.,

Plaintiffs,

v.

MARCH FONG EU, Secretary of State
of the State of California, et al.,

Defendants.

DEFENDANTS' STATUS CONFERENCE CERTIFICATE

Pursuant to local rule 235-3, defendants MARCH FONG EU, Secretary of State of the State of California, JOHN K. VAN DE KAMP, Attorney General of the State of California, ARLO SMITH, District Attorney of San Francisco County, LEO HIMMELSBACH, District Attorney of Santa Clara County, JACK E. SHELLEY, District Attorney of Placer County, and ROBERT PHILIBOSIAN, District Attorney of Los Angeles County, and after counsel for defendants and plaintiffs having conferred regarding the issues presented by rule 235-3, submit the following statements corresponding to the interrogatories of said Rule:

(a) *Service of Process of Parties Not Yet Served;*

Defendants acknowledge that sufficient service has been accomplished as to them, but have no knowledge as to whether other defendants have been properly served.

(b) *Jurisdiction and Venue;*

Defendants contend that the court is without jurisdiction to hear this case because no actual case or controversy between defendants or any of them and plaintiffs or any of them within the meaning of the jurisdictional prerequisites set forth in Article III of the United States Constitution is presented.

Moreover, defendants contend that the court would not have jurisdiction of this case pursuant to 28 U.S.C. 1331 or 28 U.S.C. 1343(3), or 42 U.S.C. 1983 or 28 U.S.C. 2201.

(c) *The Substance of Parties Claims and Defenses and the Definition of Genuinely Controverted Issues;*

The denials set forth in the answers of defendant Philibosian and defendants March Fong Eu, et al., define the genuinely controverted issues in this case and the defenses contemplated at this time are set forth in said answers.

(d) *Anticipated Motions;*

Defendants will file motions for dismissal based on lack of jurisdiction and failure to state a claim upon which relief can be granted. If necessary, defendants will also file motions for judgment on the pleadings and/or summary judgment.

(e) *Anticipated or Remaining Discovery, Including Limitations on Discovery*

Defendants request the court to issue a status conference order limiting discovery, pending resolution of its motions to dismiss for lack of jurisdiction and failure to state a claim upon which relief can be granted, to jurisdictional and standing issues only. Plaintiffs have already served requests for admissions and interrogatories regarding contentions on the merits on defendants March Fong Eu and John Van de Kamp. Said defendants have provided answers to the request for admissions and to the interrogatories. Preparation of those responses created an unwarranted burden on defendants and their counsel in light of the very preliminary stage of this litigation. Discovery with regard to the merits of the lawsuit will likely be protracted and burdensome so that none of the parties should be subjected to the expense and time commitments required for such discovery until it is determined that this matter is properly before the court.

(f) *Further Proceedings;*

Defendants request that if notwithstanding its anticipated motions for dismissal and/or summary judgment this case proceeds to trial on the merits, the court issue an order for another status conference after disposition of defendants' motions.

(g) and (h) *Special Procedures;*

Other than as set forth in the previous statements, defendants have no further suggestions regarding special procedures appropriate to this case at this time.

(i) *Prospects for Settlement;*

Unless it is ultimately determined that this case is properly before the court, there is no prospect for settlement. Even if it is determined that this case is properly before this court, the prospects for settlement are probably negligible because section 3.5 of Article III of the California Constitution precludes defendants from stipulating to the invalidity of state statutes.

(j) *Any Other Matters Which May be Conducive to the Just, Efficient and Economical Determination of the Action or Proceeding.*

Plaintiffs' second claim for relief, which is set forth at pages 23 through 35 of the First Amended Complaint, challenges the validity of section 6 of Article II of the California Constitution and section 37 of the California Elections Code which preclude official state party organizations from endorsing, supporting or opposing candidates in non-partisan elections. This prohibition on endorsements was first confirmed as the law of California in *Unger v. Superior Court* (1980) 102 Cal.App.3d 681

[162 Cal.Rptr. 611], hg. den., cert. den 449 U.S. 1131 (*Unger* I). *Unger* I was reaffirmed in *Unger v. Superior Court* (1983) 145 Cal.App.3d 50 [— Cal.Rptr. —] (*Unger* II). The California Supreme Court granted hearing in *Unger* II on November 14, 1983, and the matter appears on that Court's docket as S.F. No. 24659. Therefore, in the event that this court ultimately determines that this case is properly before it and proceeds to hear the case on the merits, defendants will request that the court abstain from exercising jurisdiction in light of the California Supreme Court's exercise of jurisdiction over the issue set forth in the second claim for relief and the possibly controlling implications of the court's resolution of that issue on the other two claims for relief set forth in the First Amended Complaint in this action.

DATED: Feb. 16, 1984.

Respectfully submitted,

JOHN K. VAN DE KAMP
Attorney General

N. EUGENE HILL
Assistant Attorney General

By /s/ GEOFFREY L. GRAYBILL

Deputy Attorney General

Attorneys for Defendants
MARCH FONG EU, et al.

DeWITT W. CLINTON, County
Counsel, County of
Los Angeles

By /s/ PHILIP W. HICKOK
Deputy County Counsel

Attorneys for ROBERT
PHILIBOSIAN, District
Attorney, County of Los Angeles

DECLARATION OF SERVICE BY MAIL
STATE OF CALIFORNIA, County of Los Angeles

Lucilla Barthel states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 648 Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 16th day of February, 1984, I served the attached DEFENDANTS' STATUS CONFERENCE CERTIFICATE upon all interested parties (See Attached List) by depositing a copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in a United States mail box in Los Angeles, California, addressed as follows:

SEE ATTACHED LIST

and that the person on whom said service was made (resides) (has his office) at a place where there is a delivery service by United States mail, and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Los Angeles, California

Dated: February 16, 1984.

Lucilla Barthel

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Attorneys for Plaintifs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVID E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; and NATIONAL COMMITTEE FOR PARTY RENEWAL;

Plaintiffs.

v.

MARCH FONG EU, Secretary of State of the State of California; JOHN VAN DE KAMP, Attorney General of the State of California; ARLO SMITH, District Attorney of San Francisco County; ROBERT PHILIBOSIAN, District Attorney of Los Angeles County; JOHN J. MEEHAN, District Attorney of Alameda County; LEO HIMMELSBACH, District Attorney of Santa Clara County; MICHAEL NAIL, District Attorney of Solano County; JACK E. SHELLEY, District Attorney of Placer County; and WILLIAM A. O'MALLEY, District Attorney of Contra Costa County,

Defendants.

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

(Filed December 5, 1983)

Plaintiffs SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE, LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE, ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE, SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE, SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE, PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA, BERT COFFEY, NANCY WALKER, LINDA POST, DOLPH ANDREWS, CAROLYN WALLACE, MARY KING, THOMAS ROMERO, MARY GINGELL, DAVID E.

STURROCK, WALTER LAYSON, MARY VAIL, ROY CHRISTMAN, JAMES FAY, NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL, SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL, and NATIONAL COMMITTEE FOR PARTY RENEWAL, complain of defendants, and each of them, and allege as follows:

JURISDICTION

1. This is an action brought by the plaintiffs for declaratory and injunctive relief, challenging on the basis of the United States Constitution certain provisions of the California Elections Code and of article II, section 6 of the California State Constitution. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. section 1331, 28 U.S.C. section 1343(3), 42 U.S.C. section 1983, 28 U.S.C. section 2201, and the United States Constitution, to redress the deprivation, under color of state law, or rights, privileges and immunities secured by the First and Fourteenth Amendments to the Constitution of the United States. Venue is proper in this Court under 28 U.S.C. section 1392(a).

PLAINTIFFS

2. Plaintiff SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE is the Democratic county central committee for the county of San Francisco, California, organized under and governed by division 7, part 2, chapter 4 of the California Elections Code (sections 8820-8945). Plaintiff LINDA POST is the chairperson of said Committee. Plaintiff MARY VAIL is an active member of said Committee and is also a member of both the

Democratic State Central Committee and that organization's Executive Committee.

3. Plaintiff SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE is the Republican county central committee for the county of San Francisco, California, organized under and governed by division 7, part 3, chapter 4 of the California Elections Code (sections 9320-9510). Plaintiff DOLPH ANDREWS is the chairperson of said Committee.

4. Plaintiff LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE is the Democratic county central committee for the county of Los Angeles, California, organized under and governed by division 7, part 2, chapter 4 of the California Elections Code (sections 8820-8945). Plaintiff CAROLYN WALLACE is the chairperson of said Committee.

5. Plaintiff ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE is the Democratic county central committee for the county of Alameda, California, organized under and governed by division 7, part 2, chapter 4 of the California Elections Code (sections 8820-8945). Plaintiff MARY KING is the chairperson of said Committee and is also a member of both the Democratic State Central Committee and that organization's Executive Committee.

6. Plaintiff SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE is the Democratic county central committee for the county of Santa Clara, California, organized under and governed by division 7, part 2, chapter 4 of the California Elections Code (sec-

tions 8820-8945). Plaintiff ROY CHRISTMAN was the chairperson of said Committee from January 1981 to January 1983, is presently an active member of said Committee, and serves as a member of the Democratic State Central Committee.

7. Plaintiff SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE is the Democratic county central committe for the county of Solano, California, organized under and governed by division 7, part 2, chapter 4 of the California Elections Code (sections 8820-8945).

8. Plaintiff PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE is the Democratic county central committee for the county of Placer, California, organized under and governed by division 7, part 2, chapter 4 of the California Elections Code (sections 8820-8945). Plaintiff THOMAS ROMERO is the chairperson of said Committee.

9. Plaintiff STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA is the state central committee of the Libertarian Party of California, a political party organized under and governed by division 7, part 6 of the California Elections Code (sections 9950-9956) and, pursuant to designation under section 9955, by division 7, part 5 of the Elections Code (sections 9750-9855). Plaintiff Libertarian State Central Committee is organized under and governed by division 7, part 5, chapter 3 of the California Elections Code (sections 9790-9823). Plaintiff MARY GINGELL is the chairperson of said State Central Committee.

10. Plaintiff BERT COFFEY was the chairperson of the Democratic State Central Committee from 1977 to

1979, is and has been an active member of the Democratic Party of California since 1948, and is presently a member of the Executive Committee of the California Democratic State Central Committee.

11. Plaintiff NANCY WALKER is and has been since January 1980 an elected member of the San Francisco County Board of Supervisors and is an active member of the California Democratic Party.

12. Plaintiff DAVID E. STURROCK is a resident of Santa Clara County, California and is a member of both the Santa Clara County Republican Central Committee and the Republican State Central Committee. Mr. Sturrock is a registered Republican and an active member of the California Republican Party.

13. Plaintiff WALTER LAYSON is a resident of Contra Costa County, California and was either an elected member or an alternate of the Contra Costa County Republican Central Committee from 1975 to October 1983. Mr. Layson is a registered Republican and an active member of the California Republican Party.

14. Plaintiff JAMES FAY is a resident of Alameda County, California and was, from 1972 to 1976, an elected member of the Alameda County Democratic Central Committee. Mr. Fay is a registered Democrat and an active member of the California Democratic Party.

15. Plaintiffs NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL and SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL are unincorporated associations of private citizens, dedicated to strengthening California political parties as par-

ticipatory vehicles for the expression of the will of the citizenry. Said plaintiffs include among their memberships persons who are active members and leaders of their respective political party organizations.

16. Plaintiff NATIONAL COMMITTEE FOR PARTY RENEWAL is an unincorporated association of private citizens, including citizens of the state of California and members of California political parties, dedicated to strengthening American political parties. Said plaintiff includes among its membership persons who are active members and leaders of their respective political party organizations.

DEFENDANTS

17. Defendant MARCH FONG EU is the Secretary of State of the state of California. Secretary of State Eu is the chief elections officer of the state and, as such, has the responsibility to administer the Elections Code, and to see that the state election laws are enforced. If, at any time, Secretary of State Eu concludes that the state election laws are not being enforced, she has the responsibility to bring the violation to the attention of the Attorney General or the district attorney of the county wherein the violation occurred.

18. Defendant JOHN VAN DE KAMP is the Attorney General of the state of California. Attorney General Van de Kamp is the chief law officer of the state of California and, as such, has the responsibility to see that the laws of the state are uniformly and adequately enforced. Attorney General Van de Kamp has direct supervision over every district attorney and sheriff, and over other state law enforcement officers, in all matters

pertaining to the duties of their respective offices. Whenever in the opinion of Attorney General Van de Kamp any law of the state of California is not being adequately enforced in any county, it is his duty to prosecute any violations of that law over which the California Superior Courts have jurisdiction.

19. Defendant ARLO SMITH is the District Attorney for the City and County of San Francisco, California. District Attorney Smith is responsible for the prosecution of those criminal offenses alleged in paragraphs 38, 50, and 62 arising under California law and occurring within San Francisco County, California.

20. Defendant ROBERT PHILIBOSIAN is the District Attorney for the City and County of Los Angeles, California. District Attorney Philibosian is responsible for the prosecution of those criminal offenses alleged in paragraphs 38, 50, and 62 arising under California law and occurring within Los Angeles County, California.

21. Defendant JOHN J. MEEHAN is the District Attorney for the County of Alameda, California. District Attorney Meehan is responsible for the prosecution of those criminal offenses alleged in paragraphs 38, 50, and 62 arising under California law and occurring within Alameda County, California.

22. Defendant LEO HIMMELSBACH is the District Attorney for the County of Santa Clara, California. District Attorney Himmelsbach is responsible for the prosecution of those criminal offenses alleged in paragraphs 38, 50, and 62 arising under California law and occurring within Santa Clara County, California.

23. Defendant MICHAEL NAIL is the District Attorney for the County of Solano, California. District Attorney Nail is responsible for the prosecution of those criminal offenses alleged in paragraphs 38, 50, and 62 arising under California law and occurring within Solano County, California.

24. Defendant JACK E. SHELLEY is the District Attorney for the County of Placer, California. District Attorney Shelley is responsible for the prosecution of those criminal offenses alleged in paragraphs 38, 50, and 62 arising under California law and occurring within Placer County, California.

25 Defendant WILLIAM A. O'MALLEY is the District Attorney for the County of Contra Costa, California. District Attorney O'Malley is responsible for the prosecution of those criminal offenses alleged in paragraphs 38, 50, and 62 arising under California law and occurring within Contra Costa County, California.

GENERAL ALLEGATIONS

26. Our form of government in the United States is built on the premise that all citizens and the political parties to which they belong shall have the right to engage in political expression and association. These rights, grounded in the equally inalienable rights of speech and assembly, are secured by the First Amendment to the United States Constitution.

27. The First Amendment affords broad protection to political expression. This protection extends not only to the political parties and their adherents, but also to

the recipients of that expression. This broad scope is necessary to ensure the unfettered interchange of ideas, especially the interchange of different views of political candidates. In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for public office is essential, because the candidates who are elected will inevitably shape the course that we follow as a society.

28. The freedom to associate with and to act collectively through the political party of one's choice is an equally integral part of the First Amendment. Political parties have been and are the major vehicle for the collective formulation, articulation, and advancement of political ideas and programs. Political parties thereby promote active competition in political ideas and governmental policies, which is necessary to a democracy. Free and strong political parties are necessary for effective citizen participation in government, and for accountability of government to its citizenry. Thus, significant burdens on a political party's ability to express the will of its adherents strikes at the core of our political process and our First Amendment freedoms.

29. California political parties and their adherents enjoy these constitutionally protected right of political expression and political association. These First Amendment freedoms are protected by the due process and equal protection clauses of the Fourteenth Amendment from infringement by any state.

30. The state of California has substantially burdened these constitutionally protected freedoms by depriving the political parties' state conventions, state cen-

tral committees, and county central committees, and their respective adherents, of the right to endorse, support, or oppose political candidates in direct primary and nonpartisan elections. By depriving the parties of the basic right to speak out on political candidates, the state has prevented the parties from having any meaningful influence in the process leading to the selection of (a) their own respective candidates for statewide executive or legislative branch offices, or (b) officials in local nonpartisan offices which in turn are the entry level positions for higher partisan offices. Moreover, by prohibiting political parties from speaking out on political candidates, the state deprives the electorate of relevant and important information not otherwise available.

31. The state of California has also substantially burdened these constitutionally protected freedoms by imposing a burdensome organizational structure upon the parties which, *inter alia*, prevents significant grass roots participation in the selection of state central committee members, limits state central committee chairpersons to two-year terms, mandates the time and place of committee meetings, and sets a ceiling on certain party dues. By prescribing this unnecessarily burdensome party structure, the state has prevented integration of local party members into a representative statewide organization, guaranteed discontinuity of leadership, imposed arbitrary meeting rules, and restricted the parties' ability to raise funds.

32. These broad restrictions on the plaintiffs' First Amendment rights of speech and association have seriously weakened and debilitated the state political parties.

The resulting ineffectiveness of the parties discourages grass roots participation, hinders the collective formation of political ideas and programs, makes it very difficult for parties to recruit, train, and support qualified candidates who will advance these ideas and programs, and diminishes the parties' unique ability to hold elected officials accountable if they fail to support such ideas and programs. In short, the broad restrictions placed on the parties and their adherents by the State of California substantially burden the exercise of their First Amendment rights of political expression and political association. Furthermore, the State of California does not impose the complained-of provisions upon private associations such as political clubs, political action committees, or candidate campaign committees, and therefore the equal protection clause of the Fourteenth Amendment is violated.

33. California's statutory scheme of regulation of state political parties is set out in the California Elections Code (the "Elections Code"). Plaintiffs are unavoidably bound by and subject to this pervasive statutory scheme by virtue of sections 8500, 8776, 8940, 9000, 9276, 9440, 9819, and 9850 of the Elections Code. These sections require the California Democratic, Republican, and Libertarian parties to conduct their party campaigns and activities through the statutorily created state central committees and county central committees. These organizations are directly subject to the unconstitutional restrictions set forth in detail below.

34. At all times material to this action, the defendants are or would be acting knowingly and under color of state law within the scope of their employment as officers of the state.

FIRST CLAIM FOR RELIEF

[Joined in by plaintiffs San Francisco County Democratic Central Committee, Alameda County Democratic Central Committee, Santa Clara County Democratic Central Committee, Placer County Democratic Central Committee, State Central Committee of the Libertarian Party of California, Bert Coffey, Linda Post, Mary King, Thomas Romero, Mary Gingell, David E. Sturrock, Walter Layson, Mary Vail, Roy Christman, James Fay, Northern California Committee for Party Renewal, Southern California Committee for Party Renewal, and National Committee for Party Renewal]

35. Plaintiffs reallege and incorporate by reference paragraphs 1 through 34 of this Complaint.

36. Section 11702 of the Elections Code provides that the state conventions, the state central committees, and the county central committees are the official governing bodies of the political parties qualified to participate in the direct primary elections. The state conventions, the state central committees, and the county central committees of each political party are prohibited by section 11702 from endorsing, supporting, or opposing any candidate for nomination by that party for partisan office in the direct primary elections. Section 11702 does not prohibit any other organization or individual from endorsing, supporting, or opposing candidates in direct primary elections. Section 11702 is in full force and effect.

37. Section 29430 of the Elections Code provides that no candidate for nomination of a political party for a partisan office in the direct primary election shall claim,

nor shall any other person claim on his behalf, that he or she is the official candidate or the officially endorsed candidate of such political party. Section 29430 is in full force and effect.

38. Violations of sections 11702 and 29430 of the Elections Code are criminal offenses punishable by fine and potential imprisonment under section 29430 of the Elections Code.

39. Plaintiff county central committees, plaintiff county central committee members and chairpersons, plaintiff Libertarian State Central Committee, plaintiff members of state central committees and state executive committees, and plaintiff individual party members are informed and believe that if they endorse, support, or oppose any candidate for nomination in the direct primary elections or participate in such a process, the defendants, as provided by law, will attempt enforcement of sections 11702 and 29430 of the Elections Code, absent an order or judgment from a court prohibiting defendants from doing so. Plaintiff county central committee members and chairpersons, plaintiff members of state central committees and state executive committees, and plaintiff individual party members are informed and believe that if they participate within their respective party organizations in such an endorsement process, the defendants, as provided by law, will attempt enforcement of sections 11702 and 29430 of the Elections Code, absent an order or judgment from a court prohibiting defendants from doing so.

40. Sections 11702 and 29430 of the Elections Code, the knowledge that disobedience of these provisions is

prohibited, and the threat of enforcement of these provisions, have caused and will continue to cause plaintiff county central committees, plaintiff Libertarian State Central Committee, plaintiff county central committee members and chairpersons, plaintiff members of state central committees and state executive committees, and plaintiff individual party members not to endorse, support, or oppose candidates in the direct primary elections, or to participate in such a process. In short, sections 11702 and 29430 prevent plaintiffs from exercising their rights of assembly, association, and speech and thus substantially burden these rights.

41. By causing plaintiff party organizations and their adherents not to endorse, support, or oppose candidates in direct primaries, the state has severely circumscribed its citizens' ability to associate together to express their political will and has severely limited the ability of their favored candidates or programs to receive the benefit of their support.

(a) Sections 11702 and 29430 of the Elections Code prevent plaintiffs San Francisco, Alameda, Santa Clara, and Placer County Democratic Central Committees, plaintiff Libertarian State Central Committee, and their respective adherents, from favoring those candidates who support their goals, ideals, and programs, or opposing those candidates who disagree with or have been unfaithful to these same goals, ideals, and programs. Said plaintiff party organizations may not argue against a particular candidate's stance on a critical issue nor attempt to persuade the voters that because of that stance, a different candi-

date deserves their vote. Thus, plaintiff party organizations have no voice in determining who their candidates shall be and are unable to formulate or to effectively advocate their adherents' programs. Plaintiff party organizations are left weak and impotent, and have become ineffective bodies unable to fulfill their function as the major vehicles for the collective articulation and advancement of political beliefs.

(b) Because of sections 11702 and 29430, plaintiffs Linda Post, Mary King, and Thomas Romero, in their capacities as chairpersons of the San Francisco, Alameda, and Placer County Democratic Central Committees, respectively; plaintiff David E. Sturrock, in his capacity as a member of the Santa Clara County Republican Central Committee; plaintiffs Mary Vail and Roy Christman, in their capacities as members of the San Francisco and Santa Clara County Democratic Central Committees, respectively; plaintiff Mary Gingell, in her capacity as chairperson of the Libertarian State Central Committee; plaintiff Walter Layson, in his capacity as a registered Republican and former member of the Contra Costa County Republican Central Committee; plaintiffs Bert Coffey, Mary Vail, Mary King, and Roy Christman, in their capacities as members of the Democratic State Central Committee and/or that organization's Executive Committee; and plaintiff David E. Sturrock, in his capacity as a member of the Republican State Central Committee, have each been unable to express their political will, both as individual party members and as chairpersons, members, and former members of official party organizations,

through the political party of their choice. These plaintiffs have found that without the ability to endorse, support, or oppose candidates, the parties and party organizations to which they belong cannot effectively pursue or advocate political positions which they and other party adherents wish to espouse. As a consequence, they have been unable to exercise their right to associate together with other party adherents to express their political beliefs.

(c) Plaintiff James Fay withdrew from the Alameda County Democratic Central Committee because, among other things, sections 11702 and 29430 prevented that Committee from expressing his views, the views of his fellow Committee members, or the views of other party adherents regarding various candidates in direct primary elections. The Alameda County Democratic Central Committee thus could not and does not fulfill plaintiff Fay's need to speak out on the candidates who were and are attempting to be the representatives of his party in the general election.

(d) Plaintiffs Northern California Committee for Party Renewal, Southern California Committee for Party Renewal, and National Committee for Party Renewal include among their memberships persons who, as active members and leaders of their respective political party organizations, have had their rights of speech, assembly, and association substantially burdened as a direct result of the complained-of provisions. Moreover, the complained-of provisions have significantly impaired the ability of plaintiffs Northern California Committee for Party Renewal and

Southern California Committee for Party Renewal to effectively engage in their usual educational, research, and advisory activities designed to restore the vitality of the California political parties and the confidence of the electorate in the political party system. In trying to undo the pernicious effects of the complained-of provisions, these plaintiffs have been forced to divert their resources from those activities.

42. Plaintiffs and each of them would endorse, support, or oppose candidates in the upcoming direct primary elections or participate in the endorsement process if such actions were not prohibited by sections 11702 and 29430 of the Elections Code.

(a) Plaintiff San Francisco County Democratic Central Committee would like the opportunity to endorse, support, or oppose candidates in direct primary elections, including candidates running for State Senate, State Assembly, and United States House of Representatives in June 1984 and in 1986, and would do so but for the existence and threat of enforcement of the complained-of provisions. Plaintiff Linda Post, the chairperson of said Central Committee, and plaintiff Mary Vail, one of that Central Committee's active members, would like to have the opportunity to act within their Central Committee to endorse, support, or oppose candidates in the direct primary elections set out above, and would do so but for the existence and threat of enforcement of the complained-of provisions.

(b) Plaintiff Alameda County Democratic Central Committee would like the opportunity to endorse,

support, or oppose candidates in direct primary elections, including candidates running for State Assembly, State Senate, and United States House of Representatives in June 1984 and in 1986, and would do so but for the existence and threat of enforcement of the complained-of provisions. Plaintiff Mary King, the chairperson of said Central Committee, would like to have the opportunity to act within her Central Committee to endorse, support, or oppose candidates in the direct primary elections set out above, and would do so but for the existence and threat of enforcement of the complained-of provisions.

(c) Plaintiff Santa Clara County Democratic Central Committee would like the opportunity to endorse, support, or oppose candidates in direct primary elections, including candidates running for State Senate, State Assembly, and United States House of Representatives in June 1984 and in 1986, and would consider doing so but for the existence and threat of enforcement of the complained-of provisions. Plaintiff Roy Christman, the former chairperson and a present active member of said Central Committee, would like to have the opportunity to act within his Central Committee to endorse, support, or oppose candidates in the direct primary elections set out above, and would do so but for the existence and threat of enforcement of the complained-of provisions.

(d) Plaintiff Placer County Democratic Central Committee would like the opportunity to endorse, support, or oppose candidates in direct primary elections, including candidates running for State Assem-

bly, State Senate, and United States House of Representatives in June 1984 and in 1986, and would do so but for the existensce and threat of enforcement of the complained-of provisions. Plaintiff Thomas Romero, the chairperson of said Central Committee, would like to have the opportunity to act within his Central Committee to endorse, support, or oppose candidates in the direct primary elections set out above, and would do so but for the existence and threat of enforcement of the complained-of provisions.

(e) Plaintiff Libertarian State Central Committee would like the opportunity to endorse, support, or oppose candidates in direct primary elections, including candidates running for United States House of Representatives in June 1984 and in 1986, and would do so but for the existence and threat of enforcement of the complained-of provisions. Plaintiff Mary Gingell, the chairperson of said State Central Committee, would like to have the opportunity to act within her State Central Committee to endorse, support, or oppose candidates in the direct primary elections set out above, and would do so but for the existence and threat of enforcement of the complained-of provisions.

(f) Plaintiff David E. Sturrock would like the Santa Clara County Republican Central Committee to have the opportunity to endorse, support, or oppose candidates in direct primary elections, including candidates running for United States House of Representatives, State Senate, and State Assembly in June 1984 and in 1986, and would encourage and contribute

to this endorsement process but for the existence and threat of enforcement of the complained-of provisions.

(g) Plaintiff Walter Layson would like the Contra Costa County Republican Central Committee to have the opportunity to endorse, support, or oppose candidates in direct primary elections, including candidates running for United States House of Representatives and State Senate in June 1984 and in 1986, and would encourage and contribute to this endorsement process but for the existence and threat of enforcement of the complained-of provisions.

(h) Plaintiff James Fay would like the Alameda County Democratic Central Committtee to have the opportunity to endorse, support, or oppose candidates in direct primary elections, including candidates running for the above-described races that affect Alameda County, and would encourage and contribute to this endorsement process but for the existence and threat of enforcement of the complained-of provisions.

43. Endorsements must be circulated for a reasonable period of time prior to an election if they are to serve their functions of informing and educating the electorate of the endorsing party's views. The process of evaluating and identifying candidates for endorsement requires additional time. Because of these timing considerations, and because the plaintiffs wish to issue or participate in issuing endorsements for the June 1984 direct primary elections, plaintiffs would soon initiate the process of evaluating and endorsing candidates but for the existence and threat of enforcement of the complained-of provisions.

44. There are no sufficiently compelling legitimate state interests requiring the restrictions contained in sections 11702 and 29430 of the Elections Code. Even if such state interests did exist, the means chosen to advance such interests are not the least intrusive alternatives available. Sections 11702 and 29430 of the Elections Code thus violate the First Amendment to the United States Constitution and the due process clause of the Fourteenth Amendment to the United States Constitution. By regulating only official party organizations, and by substantially burdening the plaintiffs' First Amendment rights of speech and association, sections 11702 and 29430 of the Elections Code also violate the equal protection clause of the Fourteenth Amendment.

SECOND CLAIM FOR RELIEF

[Joined in by plaintiffs San Francisco County Democratic Central Committee, San Francisco County Republican Central Committee, Los Angeles County Democratic Central Committee, Alameda County Democratic Central Committee, Santa Clara County Democratic Central Committee, Solano County Democratic Central Committee, State Central Committee of the Libertarian Party of California, Bert Coffey, Nancy Walker, Linda Post, Dolph Andrews, Carolyn Wallace, Mary King, Mary Gingell, David E. Sturrock, Walter Layson, Mary Vail, Roy Christman, James Fay, Northern California Committee for Party Renewal, Southern California Committee for Party Renewal, and National Committee for Party Renewal]

45. Plaintiffs reallege and incorporate by reference paragraphs 1 through 44 of this Complaint.

46. Section 6 of article II of the California Constitution provides that school, county, and city offices among others, shall be nonpartisan.

47. Section 26 of article I of the California Constitution provides that all provisions of the California Constitution are "mandatory and prohibitory, unless by express words they are declared to be otherwise." Thus, disobendience of section 6 of article II of the California Constitution is expressly prohibited.

48. Section 37 of the Elections Code defines "nonpartisan office" as an office for which no party may nominate a candidate, and provides further that school, county, and municipal offices, among others, are nonpartisan offices.

49. Section 6 of article II of the California Constitution and section 37 of the Elections Code have both been interpreted by the California state judiciary as preventing the official state political party organizations from endorsing, supporting, or opposing candidates in nonpartisan elections. Plaintiffs are informed and believe and on that basis allege that section 6 of article II of the California Constitution and section 37 of the Elections Code have not been interpreted by the California state judiciary as preventing any other organization or individual from endorsing, supporting, or opposing candidates in nonpartisan elections. Section 6 of article II of the California Constitution and section 37 of the Elections Code are in full force and effect.

50. In addition, violations of section 6 of article II of the California Constitution and of section 37 of the Elec-

tions Code are criminal offenses punishable by fine and potential imprisonment under section 29102 of the Elections Code, which is in full force and effect.

51. Plaintiff county central committees and plaintiff Libertarian State Central Committee are informed and believe that if they endorse, support, or oppose candidates in nonpartisan elections for school, county, or city offices, the defendants, as provided by law, will attempt enforcement of section 37 of the Elections Code and section 6 of article II of the California Constitution, absent an order or judgment from a court prohibiting defendants from doing so. Plaintiff county central committee members and chairpersons, plaintiff members of state central committees and state executive committees, and plaintiff individual party members are informed and believe that if they participate within their respective party organizations in such an endorsement process, the defendants, as provided by law, will attempt enforcement of sections 11702 and 29430 of the Elections Code, absent an order or judgment from a court prohibiting defendants from doing so.

52. Plaintiff Nancy Walker, a future candidate for nonpartisan office, is informed and believes that if she seeks the endorsement or support of her party in a nonpartisan election, the defendants, as required by law, will attempt enforcement of section 37 of the Elections Code and of section 6 of article II of the California Constitution, absent an order or judgment from a court prohibiting defendants from doing so.

53. Section 37 of the Elections Code and section 6 of article II of the California Constitution, the knowledge

that disobedience of these provisions is prohibited, and the threat of enforcement of these provisions have caused and will continue to cause plaintiff county central committees, plaintiff Libertarian State Central Committee, plaintiff county central committee members and chairpersons, plaintiff members of state central committees and state executive committees, and plaintiff individual party members not to endorse, support, or oppose candidates in nonpartisan elections for school, county, or city offices, or to participate in such a process, and have caused and will continue to cause plaintiff Nancy Walker not to seek endorsement for such positions. In short, section 37 of the Elections Code and section 6 of article II of the California Constitution prevent plaintiffs from exercising their rights of assembly, association, and speech and thus substantially burden these rights.

54. By causing plaintiff party organizations and their adherents not to endorse, support, or oppose candidates in nonpartisan elections and causing plaintiff candidate not to seek such endorsement or support, the state has severely circumscribed its citizens' ability to associate together to express their political will and has severely limited the ability of their favored candidates or programs to receive the benefit of their support.

(a) Section 37 of the Elections Code and section 6 of article II of the California Constitution prevent plaintiffs San Francisco, Los Angeles, Alameda, Santa Clara, and Solano County Democratic Central Committees, plaintiff San Francisco County Republican Central Committee, plaintiff Libertarian State

Central Committee, and their respective adherents, from favoring those candidates who support their goals, ideals, and programs, or opposing those candidates who disagree with or have been unfaithful to those same goals, ideals, and programs. Said plaintiff party organizations may not argue against a particular candidate's stance on a critical local issue nor attempt to persuade the voters that because of that stance, a different candidate deserves their vote. Plaintiff party organizations have no voice in determining who shall be elected to school, county, or city offices. Plaintiff party organizations are left weak and impotent, and have become ineffective bodies unable to fulfill their function as the major vehicle for the collective articulation and advancement of political beliefs.

(b) Because of the complained-of provisions, plaintiffs Linda Post, Carolyn Wallace, and Mary King, in their capacities as chairpersons of the San Francisco, Los Angeles, and Alameda County Democratic Central Committees, respectively; plaintiff Dolph Andrews, in his capacity as chairperson of the San Francisco County Republican Central Committee; plaintiff David E. Sturrock, in his capacity as a member of the Santa Clara County Republican Central Committee; plaintiffs Mary Vail and Roy Christman, in their capacities as members of the San Francisco and Santa Clara County Democratic Central Committees, respectively; plaintiff Mary Gingell, in her capacity as chairperson of the Libertarian State Central Committee; plaintiff Walter Layson, in

his capacity as a registered Republican and former member of the Contra Costa County Republican Central Committee; plaintiffs Bert Coffey, Mary Vail, Mary King, and Roy Christman, in their capacities as members of the Democratic State Central Committee and/or that organization's Executive Committee; and plaintiff David E. Sturrock, in his capacity as a member of the Republican State Central Committee, have each been unable to express their political will, both as individual party members and as chairpersons, members, and former members of official party organizations, through the political party of their choice. These plaintiffs have found that without the ability to endorse, support, or oppose candidates, the parties and party organizations to which they belong cannot effectively pursue or advocate political positions which they and other party adherents wish to espouse. As a consequence, they have been unable to exercise their right to associate together with other party adherents to express their political beliefs.

(c) Because of the complained-of provisions, plaintiff Nancy Walker, a former and future candidate for the Board of Supervisors in the City and County of San Francisco, has been and will be unable to seek the endorsement or support of her party in her campaigns. This has hindered and will hinder her ability to raise funds or to mount an effective campaign. It has also hindered and will hinder her in promoting the issues that she believes in and that she would like her party to endorse.

(d) Plaintiff James Fay has been discouraged from rejoining the Alameda County Democratic Central Committee because, among other things, the complained-of provisions prevent that Committee from expressing his views, the views of his fellow Committee members, or the views of other party adherents toward various nonpartisan candidates. The Alameda County Democratic Central Committee thus could not and does not fulfill plaintiff Fay's need to speak out on the candidates who are competing for nonpartisan posts.

(e) Plaintiffs Northern California Committee for Party Renewal, Southern California Committee for Party Renewal, and National Committee for Party Renewal include among their memberships persons who, as active members and leaders of their respective political party organizations, have had their rights of speech, assembly, and association substantially burdened as a direct result of the complained-of provisions. Moreover, the complained-of provisions have significantly impaired the ability of plaintiffs Northern California Committee for Party Renewal and Southern California Committee for Party Renewal to effectively engage in their usual educational, research, and advisory activities designed to restore the vitality of the California political parties and the confidence of the electorate in the political party system. In trying to undo the pernicious effects of the complained-of provisions, those plaintiffs have been forced to divert their resources from these activities.

55. Plaintiffs and each of them would endorse, support, or oppose candidates in upcoming nonpartisan elections, seek endorsement or support, or participate in the endorsement process if such actions were not prohibited by section 37 of the Elections Code and section 6 of article II of the California Constitution.

(a) Plaintiff San Francisco County Democratic Central Committee would like the opportunity to endorse, support, or oppose candidates in nonpartisan elections, including candidates running for the County Board of Supervisors, BART Board, and Board of Education in November 1984 and 1986, and for City Treasurer and City Attorney in November 1985, and would do so but for the existence and threat of enforcement of the complained-of provisions. Plaintiff Linda Post, the chairperson of said Central Committee, and plaintiff Mary Vail, one of that Central Committee's active members, would like to have the opportunity to act within their Central Committee to endorse, support, or oppose candidates in the nonpartisan elections set out above, and would do so but for the existence and threat of enforcement of the complained-of provisions.

(b) Plaintiff San Francisco County Republican Central Committee would like the opportunity to endorse, support, or oppose candidates in nonpartisan elections, including candidates running for the County Board of Supervisors, Board of Education, BART Board, and the San Francisco Community College District Board of Directors in November 1984 and 1986, and for City Treasurer and City Attorney in

November 1985, and would do so but for the existence and threat of enforcement of the complained-of provisions. Plaintiff Dolph Andrews, chairperson of said Central Committee, would like to have the opportunity to act within his Central Committee to endorse, support, or oppose candidates in the nonpartisan elections set out above, and would do so but for the existence and threat of enforcement of the complained-of provisions.

(c) Plaintiff Los Angeles County Democratic Central Committee would like the opportunity to endorse, support, or oppose candidates in nonpartisan elections, including candidates running for the County Board of Supervisors and for District Attorney in June 1984, and for City Council in 1985, and would do so but for the existence and threat of enforcement of the complained-of provisions. Plaintiff Carolyn Wallace, the chairperson of said Central Committee, would like to have the opportunity to act within her Central Committee to endorse, support, or oppose candidates in the nonpartisan elections set out above, and would do so but for the existence and threat of enforcement of the complained-of provisions.

(d) Plaintiff Alameda County Democratic Central Committee would like the opportunity to endorse, support, or oppose candidates in nonpartisan elections, including candidates running for the County Board of Supervisors in June 1984 and in 1986, and would do so but for the existence and threat of enforcement of the complained-of provisions. Plaintiff Mary King, the chairperson of said Central Commit-

tee, would like to have the opportunity to act within her Central Committee to endorse, support, or oppose candidates in the nonpartisan elections set out above, and would do so but for the existence and threat of enforcement of the complained-of provisions.

(e) Plaintiff Santa Clara County Democratic Central Committee would like the opportunity to endorse, support, or oppose candidates in nonpartisan elections, including candidates running for city councils in April and June 1984 and in 1985 and 1986, and for the County Board of Supervisors in June 1984 and in 1986, and would consider doing so but for the existence and threat of enforcement of the complained-of provisions. Plaintiff Roy Christman, former chairperson and present active member of said Central Committee, would like to have the opportunity to act within his Central Committee to endorse, support, or oppose candidates in the nonpartisan elections set out above and would do so but for the existence and threat of enforcement of the complained-of provisions.

(f) Plaintiff Solano County Democratic Central Committee would like the opportunity to endorse, support, or oppose candidates in nonpartisan elections, including candidates running for the County Board of Supervisors in June 1984, and would do so but for the existence and threat of enforcement of the complained-of provisions.

(g) Plaintiff Libertarian State Central Committee and its adherents would like the opportunity to endorse, support, or oppose candidates in nonpartisan elections, including candidates running for city coun-

cils and school boards in 1984, 1985, and 1986, and for County Boards of Supervisors in 1984 and 1986, and would do so but for the existence and threat of enforcement of the complained-of provisions. Plaintiff Mary Gingell, the chairperson of said State Central Committee, would like to have the opportunity to act within her Central Committee to endorse, support, or oppose candidates in the nonpartisan elections set out above, and would do so but for the existence and threat of enforcement of the complained-of provisions.

(h) Plaintiff Nancy Walker would like to seek the endorsement of her political party in her race for the Board of Supervisors of the County of San Francisco to be held in 1986, and would do so but for the existence and threat of enforcement of the complained-of provisions.

(i) Plaintiff David E. Sturrock would like the Santa Clara County Republican Central Committee to have the opportunity to endorse, support, or oppose candidates in nonpartisan elections, including candidates running for city councils and school boards in 1984, 1985, and 1986, and for the County Board of Supervisors in 1984 and 1986, and would encourage and contribute to this endorsement process but for the existence and threat of enforcement of the complained-of provisions.

(j) Plaintiff Walter Layson would like the Contra Costa County Republican Central Committee to have the opportunity to endorse, support, or oppose candidates in nonpartisan elections, including candidates running for the County Board of Supervisors

in 1984 and 1986 and for District Attorney and School Superintendent in 1986, and would encourage and contribute to this endorsement process but for the existence and threat of enforcement of the complained-of provisions.

(k) Plaintiff James Fay would like the Alameda County Democratic Central Committee to have the opportunity to endorse, support, or oppose candidates in nonpartisan elections, including candidates running for the above-described races that affect Alameda County, and would encourage and contribute to this endorsement process but for the existence and threat of enforcement of the complained-of provisions.

56. Endorsements must be circulated for a reasonable period of time prior to an election if they are to serve their function of informing and educating the electorate of the endorsing party's views. The process of evaluating and identifying candidates for endorsement requires additional time. Because of these timing considerations, and because plaintiffs wish to issue or participate in issuing endorsements for April and June 1984 nonpartisan elections, plaintiffs would soon initiate the process of evaluating and endorsing candidates but for the existence and threat of enforcement of the complained-of provisions.

57. There are no sufficiently compelling legitimate state interests requiring the restrictions contained in section 37 of the Elections Code and section 6 of article II of the California Constitution. Even if such state interests did exist, the means chosen to advance such interests are not the least intrusive alternatives available. Section 37 of the Elections Code and section 6 of article II of the

California Constitution thus violate the First Amendment to the United States Constitution and the due process clause of the Fourteenth Amendment to the United States Constitution. By regulating only official party organizations, and by substantially burdening plaintiffs' First Amendment rights of speech and association, section 37 of the Elections Code and section 6 of article II of the California Constitution also violate the equal protection clause of the Fourteenth Amendment.

THIRD CLAIM FOR RELIEF

[Joined in by plaintiffs San Francisco County Democratic Central Committee, San Francisco County Republican Central Committee, Alameda County Democratic Central Committee, Santa Clara County Democratic Central Committee, Solano County Democratic Central Committee, Placer County Democratic Central Committee, State Central Committee of the Libertarian Party of California, Bert Coffey, Linda Post, Dolph Andrews, Thomas Romero, Mary Gingell, David E. Sturrock, Walter Layson, Mary Vail, Roy Christman, James Fay, Northern California Committee for Party Renewal, Southern California Committee for Party Renewal, and National Committee for Party Renewal]

58. Plaintiffs reallege and incorporate by reference paragraphs 1 through 57 of this Complaint.

59. The State of California imposes many other regulations on state political parties in addition to those set out above. These other statutes govern, *inter alia*, the composition and selection of the official party committees, the terms of the party officers, the time and place of committee meetings, and the dues the parties may impose.

60. Although a state may regulate illegal acts, such as racial discrimination, sexual discrimination, bribery, or fraud, statutes which otherwise prescribe the internal workings of a political party are violative of the protections afforded by the First Amendment to the United States Constitution. A party's freedom to choose a method of governance that seems best calculated to strengthen the party and advance its programs and interests deserves and receives the protection of the United States Constitution. The State of California, however, has intruded into the internal workings of the California Democratic, Republican, and Libertarian Parties, preventing these parties and their adherents from choosing their own methods of governance and organization.

61. The State of California interferes with the internal workings of these political parties by means of the following sections of the Elections Code, all of which are in full force and effect.

(a) Sections 8660, 8661, 8663, 8664, 8665, 8667, and 8669 set forth who shall be members of the Democratic State Central Committee and mandate the manner in which they are chosen or appointed. Pursuant to these sections, the State Central Committee is substantially controlled by members other than those selected by Democratic County Central Committees or Assembly district caucuses. Sections 9160, 9160.5, 9161, 9161.5, 9162, 9163, and 9164 set forth who shall be members of the Republican State Central Committee and mandate the manner in which they are chosen or appointed. Pursuant to these sections, neither the Republican County Central Committees nor

any other local grass roots organization may select any State Central Committee members, except that the County Central Committee chairpersons are members of the State Committee. These provisions stifle grass roots input by active party members, including individual plaintiffs, and prevent the members of the California Democratic and Republican Parties from adopting their own method of selection which would best serve their interests and best represent the collective beliefs of their parties. These provisions have greatly weakened the official organizations of California political parties, including plaintiffs, and have greatly diminished the ability of local party activists, including individual plaintiffs and members of the Northern and Southern California and National Committees for Party Renewal, to serve on and to provide input to the State Central Committee.

(b) Section 9274 restricts the chairpersons of the Republican State Central Committee to two-year terms and prohibits such persons from succeeding themselves. Section 9816 similarly restricts the chairperson of the Libertarian State Central Committee. These provisions guarantee that there will be no continuity of leadership of these State Central Committees and, because of the limited length of the term, severely restrict the ability of any chairperson to formulate or implement a coherent political program. This directly hinders the Republican and Libertarian Parties, their official organizations, and their individual party members, including individual plaintiffs and members of the Northern and Southern California

and National Committees for Party Renewal, from furthering their political objectives and substantially burdens their constitutional right to associate together in the manner they deem best.

(c) Section 8710 mandates the time and place of the Democratic State Central Committee meetings. Sections 9210 and 9800 prescribe similar time and place requirements for the Republican and Libertarian State Central Committees, respectively. These requirements are arbitrary and burdensome to individual State Central Committee members and are an unwarranted and unnecessary intrusion into the internal workings of the Democratic, Republican, and Libertarian Party organizations.

(d) Sections 8920 and 8921 dictate time and place requirements for meetings of the Democratic County Central Committees. Sections 9420 and 9421 set forth similar requirements for the Republican County Central Committees. Sections 9830, 9840, and 9841 contain analogous provisions for the Libertarian County Central Committees. These requirements are arbitrary and burdensome to individual County Central Committee members and are an unwarranted and unnecessary intrusion into the internal workings of the Democratic, Republican, and Libertarian Party organizations.

(e) Section 9275 decrees that the Republican State Central Committee shall not impose dues of more than $24 on the members of that Committee. Sections 9818 and 9855 provide that the Libertarian

State Central Committee and the Libertarian County Central Committees, respectively, shall not impose dues of more than $24 on members of these Committees. These provisions restrict the ability of these Committees and their adherents to raise funds for their own activities and thus limit their freedom to engage in such activities. As a direct result, these Committees and their adherents are limited in their freedom to associate together to advance shared beliefs.

(f) Plaintiffs Northern California Committee for Party Renewal, Southern California Committee for Party Renewal, and National Committee for Party Renewal include among their memberships persons who, as active members and leaders of their respective political party organizations, have had their rights of speech, assembly, and association substantially burdened as a direct result of the complained-of provisions. Moreover, the complained-of provisions have significantly impaired the ability of plaintiffs Northern California Committee for Party Renewal and Southern California Committee for Party Renewal to effectively engage in their usual educational, research, and advisory activities designed to restore the vitality of the California political parties and the confidence of the electorate in the political party system. In trying to undo the pernicious effects of the complained-of provisions, these plaintiffs have had to divert their resources from those activities.

62. Violations of these sections of the Elections Code are criminal offenses punishable by fine and potential imprisonment under section 29102 of the Elections Code, which is in full force and effect.

63. Plaintiffs are informed and believe that if they adopt and follow rules of internal governance of their own choosing which are contrary to the restrictive provisions set out in paragraph 61 above, the defendants, as provided by law, will attempt enforcement of these requirements, absent an order or judgment from a court prohibiting defendants from doing so.

64. The provisions set out in paragraph 61, the knowledge that disobedience of those requirements is prohibited, and the threat of enforcement of these provisions have caused and will continue to cause the plaintiff State Central and Executive Committee members, plaintiffs San Francisco, Alameda, Santa Clara, Solano, and Placer County Democratic Central Committees and their respective chairpersons and members, plaintiffs San Francisco County Republican Central Committee and its chairperson, plaintiffs Libertarian State Central Committee and its chairperson, and plaintiff individual party members not to deviate from the restrictive provisions set out in paragraph 61.

65. As a result of these restrictive provisions, the official organizations of the California political parties and the adherents of the various political parties are inhibited from organizing their parties' structure and from conducting their parties' affairs in a manner best suited to achieve the parties' objectives of serving as the collective vehicle for the articulation and advancement of political ideas. In short, plaintiffs' constitutionally protected rights of speech, assembly, and association have been and are substantially burdened.

66. Plaintiffs and each of them would recommend that some or all of these rules be abolished and replaced by different rules if that were allowed.

67. There are no sufficiently compelling legitimate state interests requiring the restrictions set forth in paragraph 61. Even if such state interests did exist, the means chosen to advance such interests are not the least intrusive alternatives available. The restrictions set forth in paragraph 61 thus violate the First Amendment to the United States Constitution and the due process clause of the Fourteenth Amendment to the United States Constitution. By regulating only official party organizations and by substantially burdening plaintiffs' First Amendment rights of speech and association, the restrictions set forth in paragraph 61 also violate the equal protection clause of the Fourteenth Amendment.

NATURE OF RELIEF

68. There is between the parties an actual controversy as set forth above. The plaintiffs are suffering irreparable injury by virtue of the defendants' threatened enforcement of sections 37, 8660, 8661, 8663, 8664, 8665, 8667, 8669, 8710, 8920, 8921, 9160, 9160.5, 9161, 9161.5, 9162, 9163, 9164, 9210, 9274, 9275, 9420, 9421, 9800, 9816, 9818, 9830, 9840, 9841, 9855, 11702, and 29430 of the Elections Code and of section 6 of article II of the California Constitution. The plaintiffs have no plain, adequate, or complete remedy to redress the wrongs and unlawful acts complained of other than this action for declaration of rights and injunction. Any other remedies to which plaintiffs can be remitted would be attended by such uncertain-

ties and delays as to deny them substantial relief, would involve a multiplicity of suits, and would cause further irreparable injury, damage, and inconvenience to the plaintiffs. Unless the statutory provisions complained of are declared unconstitutional and their operation enjoined by this Court, the plaintiffs will be deprived of their rights as set forth above.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray that this Court enter judgment as follows:

1. A declaratory judgment declaring that sections 11702 and 29430 of the Elections Code are unconstitutional on their face or as applied.

2. Preliminary and permanent injunctive relief prohibiting the defendants from enforcing or seeking to enforce sections 11702 and 29430 of the Elections Code.

3. A declaratory judgment declaring that section 6 of article II of the California State Constitution and section 37 of the Elections Code, insofar as said provisions prohibit plaintiffs from endorsing, supporting, or opposing candidates for school, county, and city offices, are unconstitutional on their face or as applied.

4. Preliminary and permanent injunctive relief prohibiting the defendants from enforcing or seeking to enforce section 6 of article II of the California State Constitution and section 37 of the Elections Code, insofar as said provisions prohibit plaintiffs from endorsing, supporting, or opposing candidates for school, county, and city offices.

5. A declaratory judgment declaring that sections 8660, 8661, 8663, 8664, 8665, 8667, 8669, 8710, 8920, 8921, 9160, 9160.5, 9161, 9161.5, 9162, 9163, 9164, 9210, 9274, 9275, 9420, 9421, 9800, 9816, 9818, 9830, 9840, 9841, and 9855 of the Elections Code are unconstitutional on their face as applied.

6. Preliminary and permanent injunctive relief prohibiting the defendants from enforcing or seeking to enforce sections 8660, 8661, 8663, 8664, 8665, 8667, 8669, 8710, 8920, 8921, 9160, 9160.5, 9161, 9161.5, 9162, 9163, 9164, 9210, 9274, 9275, 9420, 9421, 9800, 9816, 9818, 9830, 9840, 9841, and 9855 of the Elections Code.

7. An award to the plaintiffs of the costs of this action, including reasonable attorneys' fees, pursuant to 42 U.S.C. section 1988.

8. Such other and further relief as the Court may deem just and proper.

Dated: December 5, 1983.

Respectively submitted,

JAMES J. BROSNAHAN
CEDRIC C. CHAO
PAUL R. DIESETH
MORRISON & FOERSTER

By /s/ James J. Brosnahan

Attorneys for Plaintiffs

PROOF OF SERVICE BY MAIL

(FRCivP 5(b))

I am employed with the law firm of MORRISON & FOERSTER, whose address is One Market Plaza, San Francisco, California 94105; and that I am not a party to the cause and that I am over the age of eighteen years.

That on the date hereof I served a copy of

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

on the following by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as follows:

See "Exhibit A"

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

EXECUTED at San Francisco, California, this 5th day of December, 1983.

Virginia Inferrera
(typed)

(signature)

EXHIBIT A

Paul Dobson
Deputy Attorney General
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Sacramento, CA 95814

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Secretary of State March Fong Eu,
Attorney General John Van De Kamp,
District Attorney Jack W. Shelley,
and District Attorney
Leo Himmelsbach

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ATTORNEY FOR DEFENDANT
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Arlo Smith

CALIFORNIA CONSTITUTION:

Section 6 of article II of the Constitution of California prior to amendment in June, 1986

> SEC. 6. Judicial, school, county, and city offices shall be nonpartisan.

Section 6 of article II of the Constitution of California as amended in June, 1986 by the voters of California

> SEC. 6. *(a) All judicial,* school, county, and city offices shall be nonpartisan.
>
> *(b) No political party or party central committee may endorse, support, or oppose a candidate for nonpartisan office.*

CALIFORNIA ELECTIONS CODE SECTIONS:

§ 37

"Nonpartisan office" means an office for which no party may nominate a candidate. Judicial, school, county, and municipal offices are nonpartisan offices.

§ 8660

The state central committee shall consist of:

(a) One member for each of the following elective officials:

(1) Governor.

(2) Lieutenant Governor.

(3) Treasurer.

(4) Controller.

(5) Attorney General.

(6) Secretary of State.

(7) All members of the State Board of Equalization.

(8) All Senators and Representatives of Congress from California.

(9) All members of the State Legislature.

(b) Members elected by county central committees pursuant to this part.

(c) Members appointed pursuant to this part.

(d) The national committeemen and national committeewomen of the party.

(e) Any person elected to fill a vacancy in the State Legislature in a special election.

(f) Such immediate past party officers as may be provided by party bylaws.

(g) Members elected by Assembly district caucuses pursuant to this part.

(h) The President of the California Democratic Council and the President of the Federation of Young Democrats.

(i) Former elected, nonjudicial statewide officeholders as described in Section 8660.3.

§ 8661

(a) Each officer named in subdivision (a) of Section 8660 who was nominated and elected as a candidate of the party and whose term of office extends beyond the first Monday in December in the case of legislators and the Monday after January 1 in the case of other officers next following the direct primary election, or the appointee or successor appointed, elected, or otherwise designated by law to fill a vacancy in the office of any such officer, shall be known as a "holdover member."

(b) Each candidate of the party in whose behalf nomination papers were filed and who was nominated at the direct primary election by that party shall be known as a "nominee member." Nominees for an office, the term of which extends beyond two years, are members of each succeeding state central committee until that following the direct primary election at which nominations for the office are again to be made. If a candidate is a "nominee member" in the year in which he or she is nominated, and is elected to the office at the succeeding general election, the candidate shall be considered a "holdover member" in the next odd-numbered year.

(c) One member shall be appointed pursuant to Section 8675 for each of the officers named in subdivision (a) of Section 8660 not represented by a "holdover member" nor by a "nominee member" of the party.

§ 8663

Each nominee member listed in subdivision (a) of Section 8660 shall appoint to membership on this committee voters as follows:

(a) Governor, Lieutenant Governor, Treasurer, Controller, Attorney General, Secretary of State, United States Senators from California, members of the State Board of Equalization, and State Senators shall each

appoint three voters, at least two of whom shall be of the opposite sex; and

(b) Representatives of Congress from California and Members of the State Assembly shall each appoint two voters, at least one of whom shall be of the opposite sex.

All appointments made pursuant to this section shall be absolute.

§ 8664

A "holdover member" or a "nominee member" who has been elected to an office under subdivision (a) of Section 8660 at the general election, or following any special election, shall appoint additional voters to membership on this committee, as follows:

(a) Governor, Lieutenant Governor, Treasurer, Controller, Attorney General, Secretary of State, United States Senators from California, members of the Board of Equalization, and State Senators, three additional voters, at least one of whom shall be of the opposite sex; and

(b) Representatives of Congress from California and Members of the State Assembly, three additional voters, at least two of whom shall be of the opposite sex.

All appointments made pursuant to this section shall be absolute.

§ 8665

Any person who is a member of this committee by virtue of having been elected to fill a vacancy in the State Legislature in a special election, shall within 60 days of the special election, appoint additional members to this committee in the same manner as holdover members and nominee members make such appointments.

§ 8667

Within 35 days following the regular statewide general election, each county central committee shall elect members to the state central committee as follows:

two members for the first 5,000 registered Democrats, and one member for each 25,000 registered Democrats or portion thereof, over 5,000. The number of registered Democrats shall be as of the most recent report of registration to the Secretary of State.

The members elected pursuant to this section shall be divided as equally as possible between men and women who are members of the county central committee and were elected at the preceding direct primary or who were appointed pursuant to Section 8873.

§ 8669

Within 35 days following the regular statewide general election, a caucus as provided in this section shall be convened in each Assembly district in the state by the Democratic nominee for the Assembly at the general election or by the nominee's designee. However, if the Assembly district is the residence of the Democratic State Senate nominee, or if none, of the hold-over Democratic Senate nominee, the caucus shall be called by that person or his or her designee. If the Assembly district is the residence of more than one such person, in addition to the Assembly nominee, the caucus shall be called by the person whose senatorial district includes the greatest proportion of the registered voters of the Assembly district, or that person's designee. In the event of the failure of the appropriate person to call the caucus, the chair of the state central committee shall call the caucus.

The person calling the caucus shall be assisted by an Assembly district executive committee in setting the time and place of the caucus and the procedure to be followed at the caucus. The executive committee shall consist of all members of the state central committee who attained such membership by operation of law or by appointment after the preceding direct primary election and county central committee members elected in the preceding direct primary election residing in the district.

The person calling the caucus or the person's designee shall preside over the caucus as temporary chair un-

til such time as a permanent chair is elected by the caucus.

Every registered Democrat as of the close of registration and residing in the district shall be entitled to attend and vote at the caucus. The executive committee and the person calling the caucus shall make every reasonable effort to make known to all registered Democrats in the district the time, place, and purpose of the caucus and their right to participate.

Each caucus shall elect five members to the state central committee. In addition, each caucus shall elect five alternates who shall serve as members in the event of vacancies. Alternates shall fill vacancies in the order based upon the number of votes received in the caucus. To the extent possible, persons elected shall be equally divided between men and women.

Any person seeking election to the state central committee shall, at least five days prior to the Assembly district caucus, deliver to the temporary chair a nomination paper subscribed to by the number of signers set forth in subdivision (c) of Section 6495. The nomination paper shall be in a form substantially similar to that which is set forth in Section 6494, except that the paper shall not be examined and certified by the county clerk. The county clerk shall not be required to prepare or distribute nomination papers to persons seeking election pursuant to this section.

The number of nomination papers which a person may sign shall not exceed the number of members that the caucus is entitled to elect to the state central committee.

The temporary chair or his or her designee shall be responsible for the examination and verification of all nomination papers.

Within five days following the Assembly district caucus, the person calling the caucus shall notify the chair of the state central committee and the Secretary of State in writing signed by him or her of the names and addresses of the persons elected to membership

on the state central committee and their alternates pursuant to this section.

§ 8710

This committee shall convene in Sacramento in the January after a general election on a weekend which shall be no later than the last full weekend of the month. The meeting shall begin no later than 10 o'clock a.m. on Saturday.

§ 8920

(a) Each committee shall meet in the courthouse at its county seat, upon call, which shall be given by the county clerk of the county and in quarters to be arranged or provided for by the county clerk of the county, on the second Monday after the first day in January following the direct primary election, unless the committee decides by majority vote to meet on the second Monday after the first day in July following the direct primary election and files a written memorandum of such decision with the county clerk before the direct primary election.

(b) Any decision by the committee to meet on the second Monday after the first day in July following the direct primary election shall cause later meetings of the committee to occur on the same day.

§ 8921

Notwithstanding the provisions of Section 8920, a committee in a county having a population in excess of 4,000,000 shall meet at its county seat in a centrally located public auditorium sufficient to accommodate its membership.

§ 9160

The state central committee shall consist of:

(a) One member for each of the following public officers:

(1) Governor.

(2) Lieutenant Governor.

(3) Treasurer.

(4) Controller.

(5) Attorney General.

(6) Secretary of State.

(7) All members of the State Board of Equalization.

(8) All Senators and Representatives of Congress from California.

(9) All Members of the State Legislature.

(b) The chairman of each county central committee of the party.

(c) Members appointed pursuant to this part.

(d) The national committeeman and national committeewoman of the party.

(e) Any person elected or appointed to fill a vacancy in a partisan office.

(f) The chairman, vice chairman, and the immediate past chairman of this committee.

(g) The president or chairman, as the case may be, of each statewide, volunteer organization chartered by the state central committee or by the Republican National Committee and approved for this purpose by the executive committee of the state central committee.

Volunteer organizations chartered exclusively by the Republican National Committee and subject to this section shall file an initial petition for approval with the executive committee of the state central committee at least six months prior to the first organizational meeting specified in Section 9210. Such approval, if granted, shall remain in effect indefinitely unless and until it is revoked by the executive committee.

§ 9160.5

The following are members of the state central committee:

(a) Each officer named in subdivision (a) of Section 9160 who was nominated and elected as a candidate

of the party and whose term of office extends beyond the first Monday in December in the case of legislators and the Monday after January 1 in the case of other officers next following the direct primary election, or the appointee or successor appointed, elected, or otherwise designated by law to fill a vacancy in the office of any such officer. These members are "holdover members."

(b) (1) Except as provided in paragraph (2), each candidate of the party in whose behalf nomination papers were filed and who was nominated at the direct primary election or at a special primary election by that party. These members are "nominee members." Nominees for an office the term of which extends beyond two years are members until the direct primary election at which nominations for the office are again to be made. If a nominee is elected to the office to which he was nominated at the succeeding general election, he shall be considered a "holdover member."

(2) (A) If the person most recently nominated to the Senate, Assembly, or House of Representatives received less votes for the particular office at the ensuing General Election than a write-in candidate for the same office, and the write-in candidate is elected to that office at that ensuing General Election, the write-in candidate shall, for the purposes of this part, be considered a "holdover member," provided that the write-in candidate's affidavit of registration reflects that that candidate has been affiliated with the party for at least 6 months prior to the General Election.

(B) The person described in subparagraph (A) who was nominated to legislative office or to the House of Representatives but who was not elected to the particular office shall be designated as a "nominee member." Any person designated as a "nominee member" pursuant to this subparagraph shall be entitled to all the rights and privileges as provided other nominee members of the committee.

(c) One member appointed for each of the officers named in subdivision (a) of Section 9160, not represented by a "holdover member" nor by a "nominee member" of the party. These members shall be chosen and appointed in the manner provided in subdivision (e) of this section. These members are "appointive members."

(d) (1) Except as provided in paragraph (2), if a person qualifies more than once to be a member that person shall be a member by virtue of the most recent qualification. The resulting vacancy shall be filled pursuant to subdivision (e).

(2) If a person qualifies more than once to be a member and one of the qualifications to the committee, which is not the most recent qualification, is by virtue of the person being a holdover member, that person shall be considered a holdover member. In this instance, the resulting vacancy shall be filled pursuant to subdivision (e).

(e) Vacancies in nominee or holdover memberships shall be filled as follows:

(1) If the vacancy occurs in a senatorial or Assembly district situated wholly within the limits of a single county, by appointment by the county central committee of the party in the county. Whenever such a vacancy occurs by virtue of the failure to nominate a person affiliated with the party, no person shall be chosen to fill the vacancy who does not reside in the senatorial or Assembly district involved.

(2) If the vacancy occurs in a senatorial or Assembly district comprising two or more counties, by appointment by the county central committee of the party in the county in which the disqualified or deceased member resided, if the vacancy is caused by disqualification or death, or in which the "holdover" or "nominee member" of the opposing party resides, if the vacancy is due to any other cause.

(3) If the vacancy occurs as to a member for a United States Senator from California or as to a member for any of the state officers named in subdivision (a) of Section 9160, by appointment by the state central committee.

(4) If the vacancy occurs as to a member for any Representative in Congress from California, by appointment by the state central committee of a voter who resides within the congressional district to be represented.

(f) A county central committee may authorize its chairman to appoint members to fill vacancies in the membership which the county central committee has power to fill.

§ 9161

A holdover member shall make appointments to the membership of this committee of one voter of the same sex and two voters of the opposite sex, and shall appoint five additional voters without regard to sex.

§ 9161.5

The national committeeman and national committeewoman of the party, and the chairman, vice chairman, and immediate past chairman of this committee, shall each appoint three voters to the membership of this committee, two of whom shall be of the opposite sex. Such appointment shall be in addition to any other appointments authorized by this chapter.

§ 9162

Appointive members and nominee members who were not elected at the general election shall appoint three voters to the membership of this committee, two of whom shall be of the opposite sex.

§ 9163

A chairman of a county central committee may appoint persons to membership on the state central com-

mittee meeting immediately following his election as chairman without regard to sex.

a. In counties containing three or more Assembly districts he may appoint three voters to membership.

b. In counties containing less than three Assembly districts but at least one entire Assembly district he may appoint two voters to membership.

c. In counties containing less than one entire Assembly district he may appoint one voter to membership.

§ 9164

Any person who is a member of this committee by virtue of having been elected or appointed to fill a vacancy in a partisan office, shall within 60 days of his election or appointment, appoint additional members to the committee in the same manner as holdover members make such appointments.

§ 9210

The first meeting of this committee shall convene at a suitable location in the City of Sacramento at 10 o'clock a.m. on a date designated by the chairman of the committee, but not less than 15 days nor more than 45 days after the organizational meetings of the county central committees. The location shall be designated by the executive committee of the state central committee, or, if the executive committee does not meet, by the chairman of the committee, and the Secretary of State shall be notified of the selection at least six weeks in advance of the meeting of the committee.

§ 9274

The chairman of this committee shall serve a two-year term but shall not succeed himself, and the chairmanship shall alternate each biennium between the northern and southern territories.

The southern territory consists of the following counties: Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura. The northern territory consists of the remaining counties.

§ 9275

This committee may prescribe dues to be paid by its members in the manner and by the time prescribed by vote of the majority of the members of the committee. The dues charged shall not exceed twenty-four dollars ($24) per year.

Any appointed member of this committee who fails to pay the dues prescribed by the committee may, upon first notifying the appointing member, be removed from the committee in the manner provided by the committee.

§ 9420

(a) Each committee shall meet in the courthouse at its county seat, upon call which shall be given by the county clerk of the county and in quarters to be arranged or provided for by the county clerk of the county, on the first Monday after the first day in January following the direct primary.

(b) If the day designated by subdivision (a) falls upon the same date as inauguration events following the election of a new Governor and if one or more members of the committee so requests, the meeting shall be called for the next following Monday.

Requests for postponement under this section shall be in writing and shall be served on the county clerk of the county no later than 15 days prior to the day designated under the provisions of subdivision (a).

§ 9421

Notwithstanding the provisions of Section 9420, a committee in a county having a population in excess

of 4,000,000 shall meet at its county seat in a centrally located public auditorium sufficient to accommodate its membership.

§ 9800

The state central committee shall hold its convention meeting biennially beginning at 10 a.m. on a Saturday and ending the following Sunday in August next following the direct primary election, as designated by the officers of the committee. The city in which such convention meeting is to be held shall be selected by the officers of the state central committee. The chairperson of the state central committee shall notify the Secretary of State no later than the first day of July next following the direct primary election of the date and location selected by the officers for the convention meeting of the state central committee.

§ 9816

The chairperson of the state central committee shall serve a two-year term but shall not succeed herself or himself, and the chairperson shall alternate each biennium between the northern and southern territories. The boundary between the northern and southern territories of the state shall be that latitudinal line coinciding with the northern boundaries of San Luis Obispo, Kern, and San Bernardino Counties.

§ 9818

This committee may prescribe dues to be paid by its members in the manner and by the time prescribed by vote of the majority of the members of the state central committee. The dues charged shall not exceed twenty-four dollars ($24) per year. Any member of this committee who fails to pay the dues prescribed by the committee may, upon one month's advance notice to that member, be removed from the state central committee.

§ 9830

In each county a county central committee shall be formed. At its first meeting on the second Tuesday in July following the direct primary election, a county central committee shall consist initially of those members of central committees who were elected at the most recent direct primary election and who reside in the county.

§ 9840

Each committee shall meet in the courthouse at its county seat, upon call, which shall be given by the county clerk of the county. The quarters shall be arranged or provided for by the county clerk of the county, on the second Tuesday in July following the direct primary election.

§ 9841

Notwithstanding the provisions of Section 9840, a committee in a county having a population in excess of 4,000,000 shall meet at its county seat in a centrally located public auditorium sufficient to accommodate its membership.

§ 9855

Each committee may establish annual dues not to exceed twenty-four dollars ($24) per year for members. The committee may remove members for nonpayment of dues.

§ 11702

The state convention, state central committee, and the county central committee in each county are the official governing bodies of a party qualified to participate in the direct primary election. The state convention, state central committee, and the county central committee in each county shall not endorse, support, or oppose, any candidate for nomination by that party for partisan office in the direct primary election.

§ 29102

Every person charged with the performance of any duty under the provisions of any law of this state relating to elections, who willfully neglects or refuses to perform it, or who, in his official capacity, knowingly and fraudulently acts in contravention or violation of any of the provisions of such laws, is, unless a different punishment is prescribed by this code, punishable by fine not exceeding one thousand dollars ($1,000) or by imprisonment in the state prison for 16 months or two or three years, or by both.

§ 29430

No candidate for nomination of a political party for a partisan office in the direct primary election shall claim, nor shall any other person claim on his behalf, that he or she is the official candidate or the officially endorsed candidate of such political party. A violation of this section by any person shall constitute a misdemeanor.

(3)

No. 86-434

Supreme Court U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

MARCH FONG EU, Secretary of State of the State of California; JOHN K. VAN DE KAMP, Attorney General of the State of California; ARLO SMITH, District Attorney of San Francisco County; and LEO HIMMELSBACH, District Attorney of Santa Clara County,

Appellants,

v.

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVID E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; and NATIONAL COMMITTEE FOR PARTY RENEWAL,

Appellees.

On Appeal from the United States Court of Appeals for the Ninth Circuit

MOTION TO AFFIRM OR TO DISMISS

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QUESTIONS PRESENTED

1. Does the First Amendment right of political expression and association apply to state political parties?

2. Do state laws prohibiting state political parties from endorsing candidates in primary elections and prescribing the composition of the parties' governing bodies substantially burden the parties' First Amendment rights?

3. Is a state's asserted interest in maintaining strong political parties to conduct general election campaigns sufficiently compelling to justify restrictions on the political expression and internal governance of state political parties?

4. Did the courts below err in finding that there was no triable question as to whether state regulation of the internal governance of state political parties conflicts with the policies of the parties, where the uncontroverted evidence established that the parties have attempted unsuccessfully over the years to amend the statutory scheme?

5. Does the failure of the Court of Appeals expressly to address appellants' contention that plaintiff central committees were not authorized to bring suit warrant further review by this Court in light of the extensive and uncontroverted record below establishing that all necessary authorizations had been obtained?

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

No. 86-434

MARCH FONG EU, Secretary of State of the State of California; JOHN K. VAN DE KAMP, Attorney General of the State of California; ARLO SMITH, District Attorney of San Francisco County; and LEO HIMMELSBACH, District Attorney of Santa Clara County,

Appellants,

v.

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVID E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; and NATIONAL COMMITTEE FOR PARTY RENEWAL,

Appellees.

On Appeal from the United States Court of Appeals for the Ninth Circuit

MOTION TO AFFIRM OR TO DISMISS

STATEMENT

By this motion, appellees respectfully request this Court summarily to affirm the decision below, or to dismiss this appeal for lack of a substantial federal question.

Appellees are seven county central committees of the California Democratic and Republican parties and their chairs, the state central committee of the California Libertarian party and its chair, and other organizations and individuals active in California politics. All appellees are named in the caption. Appellees were plaintiffs below in an action filed in the United States District Court for the Northern District of California on November 17, 1983, seeking declaratory and injunctive relief to secure their First Amendment rights. A first amended complaint was filed on December 5, 1983. Appellants answered on December 15, and 16, 1983.

The first amended complaint contained three causes of action, two of which are presented on this appeal.[1] By their first cause of action, plaintiffs sought the right to endorse, support, or oppose candidates for nomination in direct party primary elections. They were prohibited from doing so under California Elections Code section 11702, enacted in 1963, which provides that the "state convention, state central committee, and the county central committee in each county shall not endorse, support, or oppose, any candidate for nomination by that party

[1] The District Court abstained on the second cause of action, which challenged state law restrictions on the right of political parties to endorse candidates in nonpartisan school, county or municipal office elections, in light of the pendency in the California Supreme Court of an appeal presenting similar issues. The California Supreme Court ultimately decided that state law did not prohibit such endorsements. *Unger* v. *Superior Court*, 37 Cal. 3d 612, 692 P.2d 238, 209 Cal. Rptr. 474 (1984). A ban on nonpartisan endorsements was subsequently enacted by ballot initiative in June, 1986.

for partisan office in the direct primary election" (App. 302a).[2] In addition to the statutory restriction on endorsements, Elections Code section 29430 makes it a misdemeanor for any person to "claim on . . . behalf [of a candidate for nomination of a political party for partisan office] that he or she is the official candidate or the officially endorsed candidate of such political party" (App. 303a). These restrictions on preprimary endorsements are unique to California (App. 33a n.26).

By their third cause of action, plaintiffs sought the right to structure and conduct their internal political party affairs without intrusive and burdensome state interference. Among other restrictions challenged in the third cause of action are Elections Code provisions governing the composition and method of selection of the state central committees, and the length of the state central committee chairperson's term of office (App. 277a-280a). Violations of these provisions are also subject to criminal prosecution. Cal. Elec. Code § 29102 (App. 303a).

Plaintiffs contended below that these various state laws substantially burdened their First Amendment rights of political expression and association. Because there were no compelling state interests justifying this substantial burden, these state laws were alleged to violate the First Amendment.

On February 27, 1984, the parties appeared before the District Court for a status conference. At that conference, the District Court set the date for oral argument on cross-motions for summary judgment and a motion to dismiss that the parties indicated they intended to file. The District Court also issued a briefing schedule in ac-

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[2] As used herein "App." refers to the Appendix to the Jurisdictional Statement, "Add." refers to the Addendum to Appellee's Motion to Affirm or to Dismiss filed herewith under separate cover, and "Juris. Stmt." refers to appellants' Jurisdictional Statement.

cordance with its local rules. The briefing schedule was established in part to attempt to resolve the litigation before the upcoming primary elections (App. 43a). That schedule was subsequently extended at appellants' request to allow them additional time to oppose summary judgment (App. 232a-234a). The District Court further ordered that if appellants were unable to obtain evidence in time to include in their opposition papers, they "may seek leave to introduce evidence into the record which was not available" to them previously (App. 234a).

The competing motions were fully briefed and argued. In support of their motion for summary judgment, plaintiffs filed a 50-page memorandum and 28 declarations detailing the substantial burdens placed upon their First Amendment rights by the complained-of Elections Code provisions. Appellants submitted a 28-page opposition brief and 11 declarations. Both sides filed reply briefs in support of their respective motions. Plaintiffs also filed, in response to an informal discovery request by appellants' counsel, sworn declarations executed on behalf of each central committee plaintiff, establishing that the committees were properly authorized to bring suit (Add. M, P, R, T, U, V, W, Y, 55a-56a, 63a-64a, 68a-69a, 72a-79a, 83a-84a).

Following extended oral argument on April 9, 1984, the District Court granted summary judgment for plaintiffs as to the first cause of action and those portions of the third cause of action involving Elections Code regulation of the selection of state central committee members and the terms of state central committee chairs.[3] On April 16, 1984, appellants filed an emergency motion for

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[3] The District Court granted plaintiffs' motion as to California Elections Code sections 8660, 8661, 8663-8665, 8667, 8669, 9160, 9160.5, 9161, 9161.5, 9162, 9163, and 9164, relating to the selection of state central committee members, sections 9274 and 9816, relating to the terms of the state central committee chairs, section 11702, restricting endorsements in partisan primary elections, and sections

stay of judgment on appeal, which was granted by the Ninth Circuit Court of Appeals on April 24, 1984. A full round of briefing on the merits followed, and the case was argued on May 15, 1984. In response to appellants' argument that they had been improperly denied discovery regarding plaintiffs' authority to bring suit, the Court of Appeals remanded on May 25, 1984, with instructions to the District Court to make findings on this issue (App. 87a). The District Court found on remand that plaintiffs' uncontroverted declarations established that the necessary authorizations had been obtained (App. 74a). Plaintiffs also filed documentation consisting of each central committee's minutes and bylaws regarding authorization (Add. Z-AA, 85a-90a), and the authorization issue was briefed to the Court of Appeals (Add. CC-EE, 94a-123a). Finally, pursuant to an August 5, 1985, Order by the Ninth Circuit, the parties filed a set of supplemental briefs further discussing the ramifications of the First Amendment issues raised on appeal (App. 84a).

On June 18, 1986, the Court of Appeals affirmed, reasoning that the challenged statutes substantially burdened the First Amendment rights of the state and county central committees, and that appellants had failed to demonstrate a compelling state interest that justified this infringement. This appeal followed.

THIS COURT SHOULD AFFIRM THE DECISION BELOW HOLDING THAT THE CHALLENGED STATUTES UNCONSTITUTIONALLY INFRINGE PLAINTIFFS' RIGHTS OF POLITICAL EXPRESSION AND ASSOCIATION

The decision below rests on a straightforward application of the decisions of this Court recognizing that political parties and their adherents "enjoy a constitu-

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29102 and 29430, imposing criminal sanctions for violations of these provisions (App. 68a-70a).

tionally protected right of political association." *Cousins* v. *Wigoda*, 419 U.S. 477, 487 (1975). *Accord Democratic Party of the United States* v. *Wisconsin*, 450 U.S. 107, 120-24 (1981). *See also Lefkowitz* v. *Cunningham*, 431 U.S. 801, 808 (1977) (stating that state and county political party committees are "private, voluntary political associations"). The decision below likewise accords with this Court's teaching that "[a]dvocacy of the election or defeat of candidates . . . is no less entitled to protection under the First Amendment than the discussion of political policy generally or advocacy of the passage or defeat of legislation." *Buckley* v. *Valeo*, 424 U.S. 1, 48 (1976). Applying these principles, the lower federal courts have consistently struck down legislation that substantially burdens the exercise of these First Amendment rights by state and local political parties. *See Republican Party of Connecticut* v. *Tashjian*, 770 F.2d 265 (2d Cir. 1985), *prob. juris noted*, 106 S. Ct. 783 (1986); *Abrams* v. *Reno*, 452 F. Supp. 1166 (S.D. Fla. 1978), *aff'd*, 649 F.2d 342 (5th Cir. 1981), *cert. denied*, 455 U.S. 1016 (1982); *Martin-Trigona* v. *Dunne*, 425 F. Supp. 813 (N.D. Ill. 1977); *Fahey* v. *Darigan*, 405 F. Supp. 1386 (D.R.I. 1975). *See generally* Weisburd, *Candidate-Making and the Constitution: Constitutional Restraints on and Protections of Party Nominating Methods*, 57 S. Cal. L. Rev. 213 (1984); Note, *Developments in the Law—Elections*, 88 Harv. L. Rev. 1114 (1975).

The record before the District Court established that the challenged Elections Code provisions substantially burden plaintiffs' First Amendment rights. Plaintiffs' uncontroverted declarations highlighted the debilitating effects of Elections Code regulation of official party organizations. As those declarations showed, the complained-of statutes have prevented the parties from educating the public regarding the candidates' positions on the issues and have engendered serious voter confusion (*see e.g.*, Christman Dec. ¶¶ 6, 9-10, Add. A 3a-5a; King

Dec. ¶ 5, Add. G 30a-31a; Post Dec. ¶¶ 6, 9-10, Add. J 39a-41a; Romero Dec. ¶ 4, Add. K 48a). For example, stripped of the power to endorse or oppose primary candidates, the Democratic party was rendered impotent in the face of a primary campaign by a former Ku Klux Klan Grand Dragon, who sought and obtained that party's nomination for Congress (Constantini Dec. ¶ 2, Add. C 12a). By the same token, these restrictions have precluded the parties from recruiting or developing candidates for office, and have severely hindered their ability to attract talented and interested people (*see, e.g.*, Coffey Dec. ¶¶ 2-3, Add. B 8a-9a; King Dec. ¶ 6, Add. G 31a; Supp. Layson Dec. ¶¶ 4-6, Add. H 35a).

Based on these and other uncontroverted affidavits submitted below, the Court of Appeals found that "by excluding the committees from the process of choosing party nominees, 'a basic function of a political party [in our system],' *Kusper* v. *Pontikes*, 414 U.S. 51, 58 (1973), the state has effectively drained party central committees of political power" (App. 11a). Similarly, the Court of Appeals found that restrictions on party governance had created "rigid organization[s] incapable of adjusting and responding to changing conditions" (App. 24a). The result has been that "the parties have become weak and fossilized" (App. 32a).

Where, as here, a statute restricts fundamental First Amendment rights, the decisions of this Court hold that it may be sustained only if the government shows that the restriction "is a precisely drawn means of serving a compelling state interest." *Consolidated Edison Company of New York* v. *Public Service Commission*, 447 U.S. 530, 540 (1980); *accord First National Bank of Boston* v. *Bellotti*, 435 U.S. 765, 786 (1978). The burden to show the existence of such an interest rests on the government, *Elrod* v. *Burns*, 427 U.S. 347, 362 (1976), a burden that the Court of Appeals found had not been carried.

In defense of the substantial burden imposed by the challenged Election Code regulations, appellants argued below that the restrictions were necessary to "deflect intra-party rivalry" and to avoid "factionalism" so that the "committees would be in a strong position to carry out their statutory responsibility of winning the general election campaigns of party nominees" (Juris. Stmt. 18; App. 26a). The Court of Appeals correctly held that these interests are not compelling (App. 34a). As the court explained:

> the state has no interest in regulating political parties for the purpose of helping them win or retain voter support. . . . A party's survival depends on its ability to compete in the free marketplace of political ideas and ideals. The First Amendment limits the state to a neutral role in that competitive process. The state may not interfere with the associational rights of political parties beyond what is necessary to assure honest and orderly elections.

(App. 28a). The Court of Appeals therefore affirmed the trial court's entry of summary judgment invalidating the challenged statutes on First Amendment grounds. That judgment should be affirmed by this Court as well.

THE QUESTIONS PRESENTED ARE NOT SUBSTANTIAL

In urging plenary review by this Court, appellants do not challenge the correctness of this analysis. Instead, appellants raise two ancillary points that are not supported by the law or the record below. *First*, appellants cite the need to resolve "confusion" regarding the "states' authority to regulate their electoral systems" purportedly arising from the failure of the lower federal courts to distinguish this Court's decisions involving state political parties from decisions involving national political parties (Juris. Stmt. 16-17). *Second*, appellants point to purportedly substantial questions regarding justiciability and the summary judgment procedures employed below

(Juris. Stmt. 21-25). None of these issues presents a substantial question warranting plenary review by this Court.

A. The Decisions Below Represent the Proper Accommodation of the Interests of Political Parties and the State under this Court's Controlling First Amendment Precedents

As this Court has long recognized, the endorsement or support of political candidates is an essential and constitutionally protected form of political expression. "[I]t can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office." *Monitor Patriot Co.* v. *Roy*, 401 U.S. 265, 272 (1971). In our democracy, free discussion of political affairs is indispensable to decision-making and "is the essence of self-government." *First National Bank of Boston* v. *Bellotti*, 435 U.S. 765, 777 & n.12 (1978) (quoting *Garrison* v. *Louisiana*, 379 U.S. 64, 75 (1964)). The First Amendment exists precisely to ensure that these vital political discussions remain uninhibited. "Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussions of governmental affairs. This of course includes discussions of candidates . . . ." *Mills* v. *Alabama*, 384 U.S. 214, 218 (1966).

Political parties, whether state or national, deserve constitutional protection because they are the primary vehicles by which citizens exercise their rights of political expression and political association. "Exercise of these basic freedoms . . . has traditionally been through the media of political associations. Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents." *Sweezy* v. *New Hampshire*, 354 U.S. 234, 250 (1957). *See also Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 294 (1981) ("the practice of persons . . . banding to-

gether to achieve a common end is deeply embedded in the American political process"). The government's interference with a political party's right to endorse or to oppose candidates for elective office therefore infringes both the party's freedom of political expression and its members' "right to associate with the political party of one's choice." *Kusper* v. *Pontikes*, 414 U.S. 51, 56, 57 (1973).

Similarly, "the right of individuals to associate for the advancement of political beliefs" is fundamental, *Williams* v. *Rhodes*, 393 U.S. 23, 30 (1968), and includes the freedom "to identify the people who constitute the association, and to limit the association to those people only." *Democratic Party*, 450 U.S. at 122. Applying these principles, the lower courts have recognized that "there must be a right not only to form political associations but to organize and direct them in the way that will make them most effective." *Ripon Society, Inc.* v. *National Republican Party*, 525 F.2d 567, 585 (D.C. Cir. 1975), *cert. denied*, 424 U.S. 933 (1976).

The decisions below fit squarely within this analysis. As the Court of Appeals observed, the Elections Code ban on preprimary endorsements "prohibits political speech, the inviolability of which rests at the core of the First Amendment" (App. 33a), and has "effectively drained party central committees of political power" (App. 11a). Similarly, Elections Code regulation of the composition of state central committees "burden[s] the parties' right to govern themselves as they think best" (App. 23a). The courts below expressly found that none of the challenged restrictions furthered a compelling state interest.

Appellants concede by their silence that the decisions below properly applied these settled First Amendment principles. Nevertheless, appellants assert that further review is necessary to clarify the purportedly different First Amendment considerations applicable to regulation

of state as opposed to national political parties. Appellants nowhere explain the basis for this purported distinction, except to assert that the central committees are required by statute to conduct general election campaigns for their respective party's candidates (Juris. Stmt. 17). Appellants then argue (Juris. Stmt. 17-18) that because the committees have not challenged this statutory requirement, which assertedly furthers the state's interest in the orderly conduct of general election campaigns, the Elections Code provisions challenged herein should have been upheld under this Court's decisions in *Storer* v. *Brown*, 415 U.S. 724 (1974), and *Marchioro* v. *Chaney*, 442 U.S. 191 (1979).

Appellants' argument fails for two reasons. *First*, the uncontroverted record below establishes that the candidates, not the parties, run the general election campaign (*see, e.g.*, Supp. Layson Dec. ¶ 7, Add. H 36a). Although appellants argue that under California law the duty to run the general election campaign belongs to the central committees (Juris. Stmt. 17), plaintiffs' declarations demonstrated that the Elections Code prohibition on pre-primary endorsements has created a political vacuum that each candidate's individual campaign has been left to fill. As the Court of Appeals recognized, "each candidate forms an ad hoc committee to run his primary campaign and, if he is successful, that committee goes on to run the general election campaign independently of the party organization" (App. 35a). There is accordingly no factual linkage between the challenged Elections Code restrictions and the state's asserted interest in preserving the integrity of the general election.

Second, neither *Storer* nor *Marchioro* holds that state political parties have a lesser claim to the protections of the First Amendment than their national counterparts. In *Storer*, this Court concluded that a defeated candidate for nomination had no right to "instantaneous access to the ballot" in the general election. 415 U.S. at

736. The decision below properly read *Storer* as providing that the state's interest in regulating access to the general election ballot entitled the state to restrict intra-party competition during the period *following* the primary election. *See id.* at 752-57. *Storer* does not, however, "suggest that a political party could invoke the powers of the State to assure monolithic control over its own members and supporters." *Anderson* v. *Celebreeze*, 460 U.S. 780, 803 (1983). To the contrary, this Court recognized in *Storer* that the primary was the forum in which "contending forces within the party . . . finally settle their differences." 415 U.S. at 735. The decision below correctly observed that "*Storer* does not stand for the proposition that the state has a compelling interest in perpetuating strong ballot-qualified parties," and does not "authorize states to regulate political parties in an effort to keep them strong and conflict-free" (App. 29a). As the court explained:

> the state's asserted interest in fostering party leadership does not derive from the state's interest in orderly elections. Weak and divided campaign leadership may result in defeat at the polls, but it does not threaten the state's interest in an orderly election process. [Appellants'] argument confuses campaigns with elections, partisan interests with the interests of the state. [R]egulations designed to give ballot-qualified parties effective campaign leadership do not rest on a compelling state interest.

(App. 30a n.24). *See also* App. 35a (same analysis applied in invalidating preprimary endorsements).

The Court of Appeals likewise emphasized that appellants' reliance on *Marchioro* "outstrips the limited rationale of that case" (App. 30a n.24). In *Marchioro*, this Court affirmed the lower court's holding that legislation establishing the Washington state central committee and empowering it to perform certain limited duties, such as calling party conventions and filling vacancies on the

party ticket, was not a substantial burden on the party's associational rights. Unlike the present case, however, the regulations at issue in *Marchioro did not purport to govern the party's internal policy-making.* 442 U.S. at 198-99. To the contrary, the party itself had freely delegated to the central committee the responsibility for raising funds, recruiting candidates, and setting policy. *Id.* State regulation of the composition of the central committee was accordingly immune from constitutional attack because the party, not the state, had placed the committee at the helm of the party's internal governance. As the decision below correctly observed, the source of plaintiffs' grievance in *Marchioro* "was the party's exercise of its right to self-governance, not state interference with that right" (App. 30a n.24). By contrast, the Elections Code provisions at issue here prescribe not only the composition of the parties' central committees, but their political function as well. As the Ninth Circuit recognized, appellants engage in " 'bootstrap reasoning' " in arguing that "by regulating the committees, the legislature may deprive them of First Amendment rights" (App. 19a) (quoting *Abrams* v. *Reno*, 452 F. Supp. at 1170).

Appellants nowhere dispute that the prior decisions of this Court establish that political parties enjoy a fundamental right of political expression and association under the First Amendment. *See Democratic Party of the United States* v. *Wisconsin*, 450 U.S. 107 (1981); *Cousins* v. *Wigoda*, 419 U.S. 477 (1975). The circumstances under which that right can be restricted by governmental regulation do not depend on whether the statutes are directed at a state party as opposed to the national party, but rather upon whether the state can demonstrate a compelling interest in the regulation.[4] The decisions be-

[4] To the extent that the state can demonstrate a compelling interest, a long line of decisions of this Court holds that the state can regulate state and local political parties by precisely drawn statutes

low properly applied these settled principles. Further review by this Court is accordingly neither necessary nor warranted.

B. Appellants' Arguments Regarding Justiciability and Plaintiffs' Authority to Bring Suit Are Contrary to the Record and Warrant No Further Review by this Court

Appellants urge this Court to accept jurisdiction to consider whether the decision below "constitutes anything other than an advisory opinion" (Juris. Stmt. 25) on the grounds that the challenged statutes are purportedly not in conflict with the policies of the parties and have not been challenged by the state central committees. Appellants also contend that they were improperly denied an opportunity to conduct discovery regarding plaintiffs' authority to bring suit (Juris. Stmt. 22-23). Both arguments are contrary to the record and warrant no further consideration by this Court.

1. *Justiciability*

From the very outset of this litigation, appellants have unsuccessfully asserted that the complaint fails to raise a justiciable controversy. Appellants' justiciability argument rests on their unsupported claims that the challenged statutes are in fact supported by the parties and accordingly do not substantially burden plaintiffs' First Amendment rights. The uncontroverted record below is directly to the contrary. In support of their mo-

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necessary to advance that interest. *See, e.g., Bullock* v. *Carter*, 405 U.S. 134, 145 (1972); *Lubin* v. *Panish*, 415 U.S. 709, 717-18 (1974); *Jenness* v. *Fortson*, 403 U.S. 431, 442 (1971) (upholding state law restrictions on ballot access). To the extent that the actions of state and local political parties are taken in derogation of constitutional or civil rights of party adherents or the electorate in general, they can be challenged in judicial proceedings seeking to vindicate those rights. *See, e.g., Smith* v. *Allwright*, 321 U.S. 649 (1944); *cf. Roberts* v. *United States Jaycees*, 468 U.S. 609 (1984). This appeal, of course, presents neither of these issues.

tion for summary judgment, plaintiffs submitted numerous declarations demonstrating that the parties are fundamentally opposed to Elections Code regulation of the composition of their state central committees and prohibiting their ability to endorse candidates in primary elections. As the Ninth Circuit found, these declarations establish that the plaintiffs "would reform the composition of their parties' central committees if the statutes were invalidated," and "would make preprimary endorsements if the practice were not prohibited" (App. 15a). That finding is amply supported by the record below (*see, e.g.*, Christman Dec. ¶¶ 2-5, 13-15, Add. A 2a-3a, 5a-6a; Coffey Dec. ¶ 4, Add. B. 9a; King Dec. ¶¶ 2-6, 12, Add. G 30a-31a, 33a; Post Dec. ¶¶ 2-6, 14, Add. I 38a-39a, 42a; Romero Dec. ¶¶ 2-9, Add. K 48a-50a).

Moreover, contrary to appellants' unsupported claims in this Court (Juris. Stmt. 24), the record below establishes that the Libertarian and Democratic state central committees are fully supportive of the goals of this lawsuit. The state Libertarian party was a plaintiff below; although not formally a party, the state Democratic party has indicated its intention to join the litigation at the earliest available opportunity (Kelly Dec. ¶¶ 7-9 & Ex. A, Add. F 25a-28a; *see also* Supp. Constantini Dec. ¶¶ 3-5, Add. D 15a-16a). Moreover, plaintiffs' declarations demonstrate that the state Libertarian and Democratic parties have actively lobbied the legislature in unsuccessful efforts to change what they regard to be an inappropriate regulatory scheme (Coffey Dec. ¶¶ 7-9, Add. B 9a-10a; Constantini Dec. ¶¶ 3-4, Add. C 12a-13a; Gingell Dec. ¶¶ 5-6, Add. E 21a-22a). As the Ninth Circuit recognized, the purported failure of the parties to enact rules that conflict with the challenged statutes is of no significance where it is the Elections Code itself that "compels ballot-qualified parties to adopt the statutory restrictions" (App. 17a n.17). In that respect, the statutes invalidated below are wholly unlike

those challenged in *Marchioro*, on which appellants place so much reliance in their jurisdictional statement. As noted, this Court declined to reach the First Amendment issue in *Marchioro* because, unlike this case, the party had *voluntarily* chosen the challenged organizational scheme.

As the Court of Appeals observed and appellants conveniently ignore, the very real and immediate conflict between the challenged statutes and the legitimate desire of the plaintiffs to exercise their First Amendment rights free from unconstitutional restraints is exemplified by the plight of the California Libertarian party.

> When the Libertarian party qualified for the ballot, it was forced to jettison its "preferred and natural" party organization and replace it with one already mandated for one of the existing qualified parties. After adopting the rules of the Peace and Freedom Party as the least objectionable interim model, the Libertarians drafted a body of rules specifically tailored to their party's distinctive needs. When presented to the Legislature, the proposed rules languished and died in committee. Thus, the Libertarian party has been compelled by the state to organize itself in a way considered inimical to its political interests.

(App. 24a) (citations and footnote omitted).

The only purportedly contrary evidence proffered below is the Rodda Declaration (App. 105a). That declaration does not address *unsuccessful* efforts to change Elections Code regulation of political parties, including the unique problems of the Libertarian party, but merely states that where legislative changes in the "structure and procedures of the major political parties" have occurred, they were enacted "at the request and with the concurrence of the party affected" (Rodda Dec. ¶ 6, App. 106a). The Rodda Declaration was properly characterized by the courts below as "unsupported conjecture" (App. 35a) and

"opinions . . . not based on facts, but on speculations" (App. 55a). At any event, the Rodda Declaration does not establish or imply, as appellants contend, "that the parties actually support the statutes" (Juris. Stmt. 22).

Appellants also suggest that this case fails to present a justiciable controversy because no criminal sanction attaches to preprimary endorsements by party central committees or their members (Juris. Stmt. 8-9). Significantly, this argument is not advanced as a ground for plenary review, and for good reason. The Court of Appeals roundly rejected this argument as "anomalous" in light of the "plain statutory language" of the applicable penal statutes (App. 14a n.16), which prohibit candidates and "any other person" from claiming that the candidate is the "officially endorsed candidate" of the party. Cal. Elec. Code § 29430 (App. 303a). This unambiguous statutory language is not controverted by appellants' declarations (App. 98a-104a, 125a-139a) submitted in opposition to summary judgment. The District Court noted that those declarations state at most that the criminal sanction has not been enforced *in the past*, not that it will not be invoked in the future (App. 47a-48a). Underscoring the point, when questioned at the summary judgment hearing as to whether the state was disavowing any future intention to enforce these statutes, counsel responded that "[y]ou are asking a hypothetical question that I can't really answer. All I can do is point out to you what the history of our involvement is. What our attitude has been" (Tr. of Hrg., Add. L 54a). *Cf. Abrams* v. *Reno*, 452 F. Supp. at 1168 n.3 (recognizing justiciable controversy under virtually identical facts). The trial court further noted that appellants had not disavowed their intention "to civilly enforce the challenged provisions" (App. 48a-49a). As the Court of Appeals correctly held (App. 12a-14a), this record establishes a sufficiently realistic danger of prosecution to create a justiciable case and controversy under this Court's decisions

in *Babitt* v. *United Farm Workers National Union*, 442 U.S. 289 (1979), and *Epperson* v. *Arkansas*, 393 U.S. 97 (1968).[5]

2. *Authorization*

Finally, appellants assert that this Court should accept jurisdiction to consider whether summary judgment was improper because they were purportedly denied the opportunity to conduct discovery in violation of Federal Rule of Civil Procedure 56(f) "concerning the issues of substantial infringement and standing" (Juris. Stmt. 22-24 & n.12). Appellants' Rule 56(f) argument amounts to the claim that they were precluded from developing facts and presenting legal arguments to establish that the plaintiff central committees had not obtained proper authorization from their members to bring suit (Juris. Stmt. 23 n.12). The record amply demonstrates that there is no merit to this contention.

As the case was briefed on summary judgment, it was unclear that appellants had even raised the authorization issue. Plaintiffs' purported lack of capacity to sue was not specifically pled in the answer, *cf.* Fed. R. Civ. P. 9(a) (requiring "specific negative averment" of lack of authority to sue), and was buried in a footnote in appellants' brief to the District Court (App. 74a). Although the issue had arguably been waived, *see, e.g.*, *Summers* v. *Interstate Tractor and Equipment Co.*, 466 F.2d 42, 49-50 (9th Cir. 1972), plaintiffs filed declarations in the trial court executed on behalf of each central committee plaintiff establishing that the necessary authorizations

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[5] In their listing of Questions Presented, appellants also urge that jurisdiction is barred by the Eleventh Amendment (Juris. Stmt. ii), but do not devote a single line to this argument in their brief. As the courts below properly held (App. 17a, 45a), this Court has long recognized that the Eleventh Amendment is no bar to suits like this one, which seek declaratory and injunctive relief against state officials premised on the violation of federal constitutional rights. *See, e.g., Ex Parte Young*, 209 U.S. 123 (1908).

had been obtained (App. 75a; Add. M, P, R, T, U, V, W, Y, 55a-56a, 63a-64a, 68a-69a, 72a-79a, 83a-84a).[6] Based on this evidence, the trial court entered an order finding that "plaintiff central committees and each of them have authorization and capacity to bring and maintain this lawsuit" (App. 76a). The trial court further held that "there are a number of parties to this litigation whose authorization is not in question and who have been held to have standing" (App. 78a n.2). Appellants unaccountably fail to advise this Court of these findings.[7]

When appellants resurrected the authorization issue in the Court of Appeals, further voluminous submissions, consisting of additional declarations and the bylaws and minutes of each plaintiff central committee regarding authorization, were filed in the trial court (Add. N, O, Q, S, X, Z, AA, BB, 57a-62a, 65a-67a, 70a-71a, 80a-82a, 85a-90a). Appellants then sought and were granted leave to file supplemental briefs regarding authorization (App. 86a; Add. CC-EE, 94a-123a), which were devoted pri-

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[6] Plaintiffs' declarations were submitted in response to an informal request by appellants, made just three weeks before the summary judgment hearing (App. 120a-124a). Appellants have made no effort to justify their delay in conducting timely formal discovery regarding authorization. Instead, appellants make the wholly unwarranted suggestion that they were precluded from initiating discovery before late March 1983, because they were fully occupied compiling responses to plaintiffs' written discovery, which they contend were "voluminous and had been very time consuming to locate, assemble, and produce" (Juris. Stmt. 13-14). In fact, plaintiffs' written discovery consisted of 9 interrogatories and 6 requests for admissions, and appellants' responses consisted largely of boilerplate objections and contained little substantive information.

[7] Moreover, even if there were some error with respect to these findings, which there is not, it was acquiesced in by appellants. At no time did appellants seek leave to file additional evidence regarding the authorization issue, although the trial court's order granting them additional time to respond to the summary judgment motion expressly provided that such a motion would be entertained (App. 234a).

marily to an analysis of plaintiffs' further factual submissions. Thus, at the close of briefing in the Court of Appeals, appellants had received all relevant discovery outlined in counsel's Rule 56(f) declaration (*see* App. 115a, 118a, 120a-124a) and had been afforded the opportunity to make every argument they deemed pertinent.

In the face of this record, appellants nonetheless contend that plenary review is warranted because the opinion of the Court of Appeals does not address the authorization issue (Juris. Stmt. 23 n.12). Appellants cite no authority requiring an appellate court to address every argument for affirmance or reversal made by the parties, nor should appellate courts be burdened with such a mechanical and judicially unproductive requirement. *Cf., e.g., Bowen* v. *Roy*, —— U.S. ——, 106 S. Ct. 2147, 2151 n.4 (1986) (declining to address nonmeritorious claims). The dispositive point in this case is that appellants received all discovery they contended was necessary to oppose summary judgment and were allowed to argue the merits of the fruits of that discovery on appeal. No more was required.

CONCLUSION

For all the foregoing reasons, appellees respectfully request that this Court summarily affirm the decision below or dismiss this appeal for lack of a substantial federal question.

Dated: November 17, 1986

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ADDENDUM

No. 86-434

Supreme Court, U.S.
FILED
NOV 17 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

MARCH FONG EU, Secretary of State of the State of California; JOHN K. VAN DE KAMP, Attorney General of the State of California; ARLO SMITH, District Attorney of San Francisco County; and LEO HIMMELSBACH, District Attorney of Santa Clara County,

Appellants,

v.

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVID E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; and NATIONAL COMMITTEE FOR PARTY RENEWAL,

Appellees.

On Appeal from the United States Court of Appeals for the Ninth Circuit

ADDENDUM TO MOTION TO AFFIRM OR TO DISMISS

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ADDENDUM A

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed March 8, 1984]

Date: April 2, 1984
Time: 10:30 a.m.

DECLARATION OF ROY CHRISTMAN IN SUPPORT OF PLAINTIFFS' MOTION FOR A SUMMARY JUDGMENT

I, ROY CHRISTMAN, declare as follows:

1. I make this declaration in support of plaintiffs' motion for a summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am a member of the Santa Clara County Democratic Central Committee (the

"County Central Committee"). I have been a member of the County Central Committee since January 1979 and served as Chair from January 1981 to January 1983. I am a member of the Democratic State Central Committee. I have been an active participant in the activities of the Democratic Party of California since 1970.

2. As a member of the County Central Committee, I would like that Committee to endorse, support, or oppose candidates for nomination in direct primary elections, including candidates running for State Senate, State Assembly, and United States House of Representatives in June 1984 and in 1986. As a member of the State Central Committee, I would like that Committee also to endorse, support, or oppose candidates running for nomination in direct primary elections, including candidates running for President, United States Senator, Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, and State Controller. I would encourage and contribute to this endorsement process if that process were not prohibited by section 11702 of the California Elections Code (the "Elections Code") and the threat of enforcement of this provision by the defendants.

3. I would also like the County Central Committee to endorse, support, or oppose candidates for school, county, and city offices, including candidates running for the County Board of Supervisors, mayor, city council, and school boards in the 1984, 1985, and 1986 elections. I would encourage and contribute to this endorsement process if that process were not prohibited by section 6, article II of the California Constitution and section 37 of the Elections Code and the threat of enforcement of these provisions by the defendants.

4. I would have favored endorsing Keith Raffel in the 1982 June primary race that determined the Democratic nominee for the 12th Congressional District. Mr. Raffel

was a young, bright, and articulate Democrat, experienced in Washington, D.C. politics. It was my belief that of all the primary candidates, only Raffel would have seriously challenged the Republican candidate. Because it was not able to endorse or support Raffel, the County Central Committee was not able to express its views regarding Raffel's superior qualifications, nor was it able to work to select and develop the candidate that we believed would have been best for the party. This contributed to Raffel's loss in the primary.

5. As for nonpartisan elections, the County Central Committee would have endorsed Anita Duarte in the 1983 race for the County Board of Supervisors. We did not do so because that would have been in violation of the Elections Code and the California Constitution.

6. As these examples demonstrate, the County Central Committee's inability to endorse candidates severely hinders it in performing some of its most vital functions. It cannot educate the public on a candidate's position on the issues, nor can it recruit or develop candidates for office. The latter function is particularly crucial right now in the 22nd Assembly District, where no Democrat has registered or is likely to register to run in the June primary. Because the County Central Committee cannot support any candidate in this race, it cannot recruit anyone to run in the primary. The voters in the 22nd District will, therefore, have no choice in the November general election. Such a result undermines the very basis of our democratic form of government.

7. Numerous unofficial groups regularly endorse candidates in primary and nonpartisan elections in Santa Clara County. These groups include the National Women's Political Caucus of Santa Clara County, the Loma Prieta Chapter of the Sierra Club, labor organizations such as the Santa Clara County Central Labor Council and the California Teachers' Association, ad hoc political groups such as Associated Homeowners of Saratoga and

the West Valley Community College Review Council, and newspapers, such as the San Jose Mercury News. True and correct copies of endorsement materials distributed by some of these groups are appended hereto as Exhibit A.

8. Allowing these organizations to endorse, but forbidding that right to our County Central Committee makes no sense. All of the organizations mentioned in paragraph 7 are private interest groups. Their endorsement decisions are made at closed meetings and are based on a narrow range of issues. In contrast, the County Central Committee holds open meetings. Its members are elected by the voters, and its decisions reflect a broad range of interests. Our endorsement would, therefore, be much more democratic and meaningful. Moreover, if our government is going to be responsible to the people, voters must be given as much information as possible. By censoring the County Central Committee's right to express its opinion, the state is denying voters a valuable and basic piece of information.

9. In many school, county, and city elections, the race is between a candidate whom people know is a Republican and a candidate whom people know is a Democrat. In recent San Jose and Santa Clara mayoral races, for example, it was clear to any active and informed voter that they were faced with a contest between a Republican and a Democrat.

10. Allowing anyone to endorse except for the County Central Committee has also led to voter confusion. Misleading slate mailers have been distributed that suggest the County Central Committee has endorsed a candidate when, in fact, no such endorsement had, or indeed could have been issued. One such mailer, distributed in the 1982 general election campaign, stated that it was a "Democratic Voter Guide." Because I was then Chair of the County Central Committee, the press asked me to comment upon this mailer. I told them that I believed

it was an improper step by the candidate who distributed it, because it could mislead voters into believing an official endorsement had been given. A true and correct copy of this mailer is appended hereto as Exhibit B. If the County Central Committee were allowed to endorse, we could fill the vacuum presently occupied by such mailers and reduce voter confusion.

11. Many people have called to ask me who the County Central Committee is supporting in given races. I always try to tell them something about the candidates, but I am also forced to say that the County Central Committee is prohibited by law from endorsing or supporting such candidates.

12. I became a member of the County Central Committee because I shared the political beliefs of the other members of that organization. I thought that the County Central Committee could advance these shared political beliefs far more effectively than I could as a single individual. My individual endorsement is worth far less than the collective endorsement of the County Central Committee as a whole. Since the Committee cannot endorse in primary or nonpartisan campaigns, our whole purpose in associating together has been frustrated.

13. Our County Central Committee would adopt more flexible rules regulating the time and place of our meetings than those contained in sections 8920 and 8921 of the Elections Code. Other than our first meeting, we regularly meet in a location other than the County Courthouse, with no adverse effects. Having to hold our first meeting in the Courthouse has caused problems in the past. For example, one year we had to delay our meeting because one member could not find the building.

14. As a member of the Democratic State Central Committee and an active member of the Democratic Party, I would also like to abolish sections 8660, 8661, 8663, 8664, 8665, of the Elections Code, to allow that Committee to control the method of selecting its own

members. A party should be allowed to determine how to select members of its central policymaking body, the body that controls the internal affairs of the organization. Currently, we are not allowed to choose the selection method that would best meet the needs of our party.

15. In addition, I would favor the adoption of more flexible rules regulating the time and place of State Central Committee meetings contained in section 8710 of the Elections Code. Cities should be able to compete for the meeting. The meeting attracts publicity and would bolster the strength of the local party organization in the city where it is held. As it is, we must meet only in Sacramento, depriving all other California cities and local party organizations of the benefits the meeting offers.

16. Neither I, nor the County Central Committee, nor the State Central Committee, has sought to disobey these rules mentioned in paragraphs 13 to 15 because of the threat of enforcement of these provisions by the defendants.

17. I am familar with an October 1983 poll conducted and published by The Field Institute which stated that 85% of all adults interviewed said they followed events in government and public affairs, and 76% agreed that there are important differences in what the Democratic and Republican Parties stand for.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at San Francisco, California, this 6th day of March, 1984.

/s/ Roy Christman
ROY CHRISTMAN

[Proof of Service Omitted]

ADDENDUM B

[Designation of Council Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed March 5, 1984]

Date: April 2, 1984
Time: 10:30 a.m.

DECLARATION OF BERT COFFEY IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, BERT COFFEY, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I was the Chairperson of the Democratic State Central Committee (the "State Central Committee") from 1977 to 1979. I am currently a member of the Executive Committee of the State

Central Committee and have held that position since 1982. I have been an active member of the Democratic Party since 1948, and have held various party offices, including the Northern Chair of the State Central Committee (1975-77), Chair of the Contra Costa County Democratic Central Committee (1968-70, and 1980-82), member of the Democratic National Committee (1980-present), and member of the Hunt Commission, which was formed to review and write the rules governing the 1984 Democratic National Convention (1983).

2. It is crucial for the Democratic Party to be allowed to endorse, support, or oppose candidates for public office. Without that ability, the Party is a powerless, ineffective organization. Shortly after I was elected Chair of the State Central Committee I approached a person who traditionally had been very generous in making large contributions to Democratic candidates. Thinking that he might be willing to contribute to the Party, I asked him if he might want to donate some money. He laughed, turned to me and said that I was crazy, that he "gave direct." He meant that he gave his money directly to the candidates and not to the Party. This individual recognized that without the ability to work for the election or defeat of candidates, the Party serves no important function.

3. Because the Party is so severely regulated, the Party organization is unable to attract many talented and interested people who would otherwise have joined the Party. Deprived of quality personnel and restricted from endorsing candidates, the Party is so weakened that it cannot fulfill the essential roles it must play in our democracy. One of these roles is holding elected officials accountable to the citizenry. Without a strong party system, wealthy individuals and special interest groups have an inordinate amount of control over elected officials. Another of the roles that a party should play is pursuing and advocating the political positions which I and other

party adherents wish to espouse. Because of its inability to endorse candidates and its resulting weakness, the Party cannot effectively serve this role.

4. I would therefore like the State Central Committee and the County Central Committee to endorse, support, or oppose candidates running for nomination in direct primary elections and would encourage and contribute to this endorsement process if that process were not prohibited by section 11702 of the California Elections Code ("the Elections Code") and the threat of enforcement of this provision by the defendants. I would also like the County Central Committees to endorse, support, or oppose candidates for school, county and city offices and would encourage and contribute to this endorsement process if that process were not prohibited by section 6, article II of the California Constitution and section 37 of the Elections Code and the threat of enforcement of these provisions by the defendants.

5. As Chair of the State Central Committee, I was aware of the attitudes and preferences of the Party's members as to political issues. I carefully considered and attempted to accommodate the wishes of the majority of these members in carrying out my duties as Chair.

6. It is demonstrably not true that party endorsements will predetermine the victor in a political election. There have been countless cases in the history of American politics where the endorsees of political parties have lost. In general, voters are independent and will not automatically rubber stamp the party endorsee.

7. During my term as Chair of the State Central Committee, I was heavily involved in the California Democratic Party's effort to reform the statutes governing its organizational structure. Before 1979, the Party had tried for twenty years to persuade the State Legislature to change the rules governing the selection of members to the State Central Committee. The Party was dis-

satisfied because the vast majority of State Central Committee members were party nominees and their appointees, leaving only a few seats for the County Central Committees. Time after time, however, the Legislature had rebuffed any effort to reform this unrepresentative system.

8. When I became Chair, a series of hearings were conducted to determine the attitude of the Party membership towards reforming the method of selecting members to the State Central Committee. Other members of the Party leadership and I presented a proposal based upon these meetings to the legislature. Although the Legislature finally agreed to change the rules, they did so only after a protracted, hard fought battle and even then substantially deviated from the Party's proposal. I am still not satisfied with the statutorily prescribed method of selecting the State Central Committee, as set forth in sections 8660, 8661, 8663, 8664, 8665, 8667, and 8669 of the Elections Code. They still do not provide for adequate representation of the County Central Committees on the Democratic Party's central policy making body.

9. Even to the extent that they improved the rules, the 1979 reforms could be erased at any time by the Legislature. A bill proposed last year by Assemblyman Richard Floyd, A.B. 1977, would have done that, returning the Party in large part to the unsatisfactory pre-1979 method of selecting members to the State Central Committee. This illustrates the danger of putting the Democratic Party's constitutional rights into the hands of the Legislature.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Richmond, California, this 3rd day of March, 1984.

/s/ Bert Coffey
BERT COFFEY

ADDENDUM C

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed March 5, 1984]

Date: April 2, 1984
Time: 10:30 a.m.

DECLARATION OF EDMOND COSTANTINI IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, EDMOND COSTANTINI, declare as follows:

1. I am a member of both the State Central Committee of the Democratic Party of California and of that body's Executive Board. I have been a member of both organizations since 1978. I also serve as chair of the California Credentials Committee. I have been an active member of the Democratic Party since 1960.

2. As chair of the Credentials Committee, I preside over meetings held to consider whether individuals should be credentialed as members of the State Central Committee. In 1980, the credentials of Tom Metzger were challenged, placing the matter before our Committee. Tom Metzger had been a Democratic nominee for Congress from the San Diego area, but had been defeated by Representative Clair Burgener, a Republican. Mr. Metzger received the nomination even though he was a Grand Dragon of the Ku Klux Klan and stood for policies abhorred by the Democratic Party and its members. Because of the provisions of the Elections Code, the Democratic Party could not promote the candidacy of a more representative Democrat or argue to the electorate that Mr. Metzger's program and ideas should be rejected. The Credentials Committee did not credential Mr. Metzger, a position affirmed by the whole State Central Committee.

3. I recently learned that in the spring of 1983 Assemblyman Richard Floyd introduced a bill into the Assembly, A.B. 1977, that would have changed the method of selecting the members of the Democratic State Central Committee, forcing the Party to revert in large part to the system that had existed before 1979. A true and correct copy of that bill as it was originally proposed is appended hereto as Exhibit A. The State Party had long deliberated over the matter of internal reform—a process in which I was intimately involved—and, after the conclusion of those deliberations, had succeeded with considerable difficulty in persuading the legislature to abandon the pre-1979 structure. The Party advocated reform because the old system did not provide for the fair representation of County Central Committees or grass roots activists on the State Central Committee. In short, it did not meet the needs of the party. It was therefore distressing to learn that this bill, A.B. 1977, had been introduced into the legislature without consultation with the Party and, as far as I know, without

the knowledge of the official Party leadership. The Party has avoided being injured by this misconceived bill because of legislative amendments that have struck these offending provisions.

4. The danger of allowing the Legislature to have such extensive control over a political party's structure is well illustrated by this example. Only the party can best judge its needs and thus best structure its organization. As long as the legislature has the power to change the rules governing the internal affairs of a political party at will, the health and welfare of that party is in constant jeopardy.

5. Late in 1983, I learned that the California Fair Political Practices Commission had directed its staff to prepare a report on slate mailings in the 1982 primary campaigns. I contacted a member of the staff to request a copy of that report, which that person later gave me. It identifies a number of problems associated with slate mailings which affect the health and well-being of our political system. I agree with the report's conclusion on page 55 that these problems could be ameliorated by allowing "party endorsements in primary campaigns so as to offset the 'growing power' of slate mailing." I have appended hereto as Exhibit B a true and correct copy of this report.

6. Also appended hereto, as Exhibit C, is a true and correct copy of a slate mailer distributed by Willard Murray in the Los Angeles area in June 1982.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Davis, California, this 29th day of February, 1984.

/s/ Edmond Costantini
PROFESSOR EDMOND COSTANTINI

[Exhibits A Through C Omitted]

ADDENDUM D

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed April 2, 1984]

Date: April 9, 1984
Time: 10:30 a.m.

SUPPLEMENTAL DECLARATION OF EDMOND COSTANTINI IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, EDMOND COSTANTINI, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am a member of both the State Central Committee of the Democratic Party of California ("State Central Committee") and of that body's Executive Board.

I have been a member of both organizations since 1978. I also serve as chair of the Credentials Committee of the State Central Committee. I have been an active member of the California Democratic Party since 1960.

2. I hold a Ph.D. in political science from the University of California at Berkeley, and have been a professor of Political Science at the University of California at Davis since 1964. My areas of expertise are political parties, political leadership, and public opinion.

3. On October 15, 1983, I attended a meeting of the Executive Board of the State Central Committee which was held in San Diego, California.

4. At that meeting, I, along with other members of the Executive Board of the State Central Committee, presented to the full Executive Board a resolution supporting the above-captioned lawsuit. The text of the resolution, as it was actually presented, is contained in Exhibit A to this Declaration. The resolution passed by a voice vote without audible dissent. This resolution was presented, and the vote was taken, pursuant to the rules applicable to the Executive Board. For example, we collected the signatures of at least fifty (50) Executive Board members on behalf of the resolution before we presented it for the consideration of the full Board. (*See* Article VIII, Section 7(d) of the By-Laws of the Democratic State Central Committee, attached as Exhibit 2 to Defendants' Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment and in Support of Defendants' Motions to Dismiss and for Summary Judgment.)

5. The resolution recognized that the Party is "subject to excessive governmental regulation, with state laws prescribing in extraordinary detail how they are to be organized, forbidding them to endorse candidates entered in their own primaries; and preventing them from endorsing candidates for local elective office . . . ." and

therefore resolved that "[t]he Executive Board of the California Democratic Party supports, in principle, the aforementioned suit. . . ."

6. The question of the State Central Committee joining this lawsuit as a co-plaintiff was not put before the Executive Board.

7. I am not a named plaintiff in this lawsuit. However, I believe strongly in the objectives of all three causes of action of this lawsuit.

8. The right of political party organizations such as county central committees to endorse political candidates, which right is sought in this lawsuit, is essential to the vitality of the political parties. The ability of the political party organizations to speak out is a necessary element of the public debate and free exchange of ideas which is a principle on which our government is founded.

9. Political parties thrive on the competition of ideas, the clash of ambitions, and the conflict of interests characteristic of all robust democratic institutions. One of their special functions historically and worldwide is that they institutionalize conflict among the citizenry, and that they provide that citizenry an organizational forum in which conflict can be expressed and resolved peacefully so that common purposes can be more effectively pursued.

10. Contests for a party's endorsements are indeed occasions when the various forces of conflict may come into play. It is by no means self-evident that, as a general rule, suppressing those forces within party organizations leads them to become healthier and more vital places or more attractive vehicles for public participation in the process of self government. To the contrary, suppressing the competition among ideas and among candidates would destroy the vitality and meaning of the party organizations.

11. In a given instance, prudence might dictate that a county central committee not become involved in a particular primary or local election contest. Plaintiffs' lawsuit would in no way prevent official party organizations from exercising such self-restraint if for some reason the organization believed such restraint to be in its best interests. In other words, the members of those organizations could find on their own accord and on the basis of their own intelligence that an endorsement in a given instance would be politically unwise or imprudent —a conclusion which defendants paternalistically claim the State of California should reach for them in *every* instance.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Davis, California, this 30th day of March, 1984.

/s/ Edmond Costantini
EDMOND COSTANTINI

EXHIBIT A

RESOLUTION FOR CONSIDERATION AT DSCC EXECUTIVE BOARD MEETING

October 15, 1983

WHEREAS: California's Political Parties are subject to excessive governmental regulation, with state laws prescribing in extraordinary detail how they are to be organized, forbidding them to endorse candidates entered in their own primaries; and preventing them from endorsing candidates for local elective office;

WHEREAS: a number of court decisions across the nation suggest that this excessive state regulation of parties violates the First Amendment to the U.S. Constitution;

WHEREAS: the California Committee on Party Renewal—a multiparty group of party leaders and other interested persons dedicated to the reinvigoration of political parties—is filing suit in federal court to end excessive governmental intrusion into party matters;

WHEREAS: one of the state's most distinguished trial lawyers—James Brosnahan of the prestigious San Francisco firm of Morrison & Foerster—has agreed to serve on a pro bono basis as counsel in this effort;

WHEREAS: several Democratic (and other) organizations and party leaders have already agreed to serve as colitigants—including, for example, the Democratic County Committees in the following counties: San Francisco; Alameda; Los Angeles; Santa Clara; Solano.

AND WHEREAS: winning the suit will not require parties to reorganize or to endorse in primaries and local elections, but will only allow them to make decisions on these matters of their own accord;

THEREFORE, BE IT RESOLVED THAT:

The Executive Board of the California Democratic Party supports, in principle, the aforementioned suit;

THEREFORE, BE IT FURTHER RESOLVED THAT:

The State Party Chair bring these matters to the attention of Democratic Party Leaders in the Legislature and present them with an opportunity to offer legislative input regarding the aforementioned suit; and,

THEREFORE, BE IT FURTHER RESOLVED THAT:

If, because of the filing of the aforementioned suit, it becomes necessary or advisable for the State Party to come to a decision on this matter prior to the February 1984 State Party Convention, the State Party officers are delegated the responsibility for determining whether the Party shall join the suit as co-plaintiff.

ADDENDUM E

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed March 5, 1984]

Date: April 2, 1984
Time: 10:30 a.m.

DECLARATION OF MARY GINGELL IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, MARY GINGELL, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am a member of the State Central Committee of the Libertarian Party of California and serve on the Executive Committee of

that body. I have been a member of the State Central Committee since November 1981 and served as Chair from August 1982 to February 1984. I have been an active participant in the activities of the Libertarian Party of California since June 1981.

3. The organizations of the Libertarian Party have endorsed candidates running for school, county, or city offices in the past, including candidates running for Mayor of San Francisco, Mayor of Los Angeles, San Francisco County Board of Supervisors, Santa Cruz County Board of Supervisors, Palo Alto School Board, and Santa Barbara School Board.

4. The ability of the Libertarian Party organization to endorse candidates is crucial. Ours is a small, relatively young party. We must be free to recruit and train strong, capable candidates in primary races if we are to develop as a party. Only by being free to support primary candidates for partisan office can we hope to accomplish this objective. In school, county, and city elections, it is important for our voice to be heard, as our opinions are not being expressed by other unofficial organizations. If we are silenced, then the electorate is deprived of the Libertarian point of view.

5. The Libertarian Party of California was not formed until 1972. In 1980 we became a qualified party, governed by the provisions of the California Elections Code, and entitled to participate in primary elections. Before 1980, our party had organized itself by regions, not counties. When we became a qualified party, however, we were forced by the provisions of the Elections Code to change our structure and our internal party rules, including a change to an organization based on counties. These provisions stated that we had to abide by the detailed statutory provisions governing the Republican Party, the Democratic Party, the American Independent Party, or the Peace and Freedom Party, all of which have goals and concerns different from those of the Lib-

ertarian Party. Although we selected the rules of the Peace and Freedom Party as the best alternative, we were still burdened by having to establish a totally new statewide organization that differed from our preferred and natural party structure.

6. The Libertarian Party has unsuccessfully tried to persuade the State Legislature to enact legislation specifically tailored to our organizational needs so that we would not have to operate under the burdensome rules governing the Peace and Freedom Party. In 1981, a bill that would have accomplished that goal was introduced by Assemblyman Robert Naylor. The Assembly Elections Committee considered this bill, but did not pass it, illustrating the danger of leaving in the Legislature the power to regulate a party organization's internal affairs.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Costa Mesa, California, this 29 day of February, 1984.

/s/ Mary T. Gingell
MARY GINGELL

ADDENDUM F

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs/Appellees,
v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants/Appellants.

[Filed January 16, 1985]

DECLARATION OF PETER D. KELLY

I, PETER D. KELLY, declare as follows:

1. I am and have been since February 1, 1983, the State Chair of the California Democratic Party. This is a two-year position. I am an attorney by profession, and have my law offices in the City of Los Angeles. If called as a witness, I could testify competently to the matters herein.

2. The Democratic State Central Committee is the official governing body of the Democratic Party of California, as provided in Elections Code § 8777.

3. The by-laws of the Democratic State Central Committee provide that the State Chair shall be the principal

executive officer and the official spokesman of the California Democratic Party. The by-laws also provide that the State Chair shall do everything necessary to carry into effect the purposes of this organization.

4. The by-laws further provide that there shall be an Executive Board which shall have all the powers and duties of the Democratic State Central Committee when it is not in actual session.

5. The membership of the Executive Board consists of the following members of the State Central Committee:

(a) The United States Senators;

(b) The Governor, Lieutenant Governor, Treasurer, Controller, Attorney General, Secretary of State and all members of the State Board of Equalization;

(c) Two members of the House of Representatives, each of whom shall be selected by the members of the House of Representatives on the State Central Committee;

(d) Two members of the State Assembly, each of whom shall be selected by the members of the Assembly on the State Central Committee;

(e) Two members of the State Senate, each of whom shall be selected by the members of the State Senate on the State Central Committee;

(f) One County Central Committee representative elected for each 100,000 registered Democrats or portion thereof resident in each county;

(g) All Assembly District Representatives;

(h) All National Committee Members of the Democratic Party;

(i) All officers and immediate past officers of the State Central Committee;

(j) The president of the California Democratic Council and of the California Federation of Young Democrats;

(k) The chair of [sic] co-chairs of each Standing Committee of the State Central Committee; and

(l) The chair of each special Caucus officially recognized by the State Central Committee.

6. On December 8, 1984, the Executive Board, pursuant to the Democratic State Central Committee bylaws, held its last quarterly meeting of 1984 in Los Angeles, California. I was present at and presided over this meeting.

7. At the December 8 meeting, a resolution was presented and adopted regarding the Democratic State Central Committee's support of, and participation in, the lawsuit entitled *San Francisco County Democratic Central Committee, et al.* v. *March Fong Eu, et al.* A true and correct copy of said resolution is attached hereto as Exhibit A.

8. The resolution provides, in part, that the State Central Committee supports said lawsuit in all of its causes of action, affirms its principles and goals, and wishes to assist in its prosecution.

9. In accordance with the December 8 resolution, I am authorized to represent that the Democratic State Central Committee, at an appropriate juncture, will seek to be joined as a plaintiff in this lawsuit with respect to those portions of the third cause of action as to which final judgment has not been entered by this Court.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 14th day of January, 1985 at Los Angeles, California.

/s/ Peter D. Kelly
PETER D. KELLY
State Chair
California Democratic Party

EXHIBIT A

RESOLUTION FOR CONSIDERATION AT DEMOCRATIC STATE CENTRAL COMMITTEE EXECUTIVE BOARD MEETING DECEMBER 8, 1984

WHEREAS: California political parties are subject to state laws severely and excessively regulating their political speech and internal affairs;

WHEREAS: Certain of these state laws forbid political party organizations from endorsing, supporting, or opposing candidates entered in their own primaries or running for local elective office, while other state laws prescribe in extraordinary detail how political party organizations are to organize and govern themselves;

WHEREAS: These state laws substantially burden the fundamental freedoms of speech and association of California political party organizations and their members, which freedoms are guaranteed by the First Amendment to the United States Constitution;

WHEREAS: A lawsuit entitled *San Francisco County Democratic Central Committee, et al.* v. *March Fong Eu, et al.* was filed in the United States District Court for the Northern District of California in November 1983 challenging the validity of these state laws;

WHEREAS: Said lawsuit sets forth three causes of action, the first challenging the restrictions upon political party organizations' ability to endorse, support, or oppose candidates running in party primaries; the second, challenging the restrictions upon political party organizations' ability to endorse, support, or oppose candidates running for election to school, county, and city offices; and the third, challenging certain restrictions on how political party organizations may organize and govern themselves;

WHEREAS: Plaintiffs in this lawsuit currently include the Democratic County Central Committees from San

Francisco, Los Angeles, Alameda, Santa Clara, and Solano Counties; the San Francisco County Republican Central Committee, the State Central Committee of the California Libertarian Party; the chairs or former chairs of various of these central committees; as well as other prominent persons active in California politics;

WHEREAS: Plaintiffs in this lawsuit prevailed in United States District Court with respect to the first cause of action and substantial portions of the third cause of action;

WHEREAS: The District Court's decision with respect to the first and third causes of action has been appealed by defendants, and the matter is presently pending in the Ninth Circuit Court of Appeals;

WHEREAS: The District Court abstained with respect to the second cause of action, pending a ruling by the California Supreme Court in a case known as *Unger, et al.* v. *Superior Court* (*Unger II*);

WHEREAS: The California Democratic State Central Committee's Executive Board resolved on October 15, 1983 to support, in principle, this lawsuit;

WHEREAS: Pursuant to Article VIII, section 1 of the by-laws of the California Democratic Party, the Executive Board of the Democratic State Central Committee has all the powers and duties of the Democratic State Central Committee when, as now, that body is not in session;

AND WHEREAS: The California Democratic State Central Committee enthusiastically supports this lawsuit in all of its causes of action, affirms its principles and goals, and wishes to assist in its prosecution;

THEREFORE BE IT RESOLVED THAT: The State Party Chair has authority to act on behalf of the State Party, in consultation with the State Party officers, to

support and assist in the prosecution of the lawsuit entitled *San Francisco County Democratic Central Committee, et al.* v. *March Fong Eu, et al.* and, without limiting this authority, shall be given specific authority to authorize (1) the joining of the California Democratic State Central Committee and/or its Executive Board as a co-plaintiff in this suit, at such time and in such manner as the Chair deems appropriate and feasible; (2) the filing of amicus curiae briefs or other appropriate legal papers with the courts on behalf of the Democratic State Central Committee and/or its Executtive Board to set forth this body's position regarding this lawsuit and to make any appropriate legal arguments in support thereof; (3) the filing of sworn declarations testifying to these actions and to the full support of this body for this lawsuit; (4) the issuance of public statements of support for this lawsuit; and (5) the taking of any other appropriate actions consistent with this resolution.

ADDENDUM G

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed March 5, 1984]

Date: April 2, 1984
Time: 10:30 a.m.

DECLARATION OF MARY KING IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, MARY KING, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Chairperson of the Alameda County Democratic Central Committee (the "County Central Committee"). I have been a member of the County Central Committee since 1979 and have served as Chair since January, 1983. I have been an active participant in the activities of the Democratic Party of California since 1976.

2. The County Central Committee would endorse, support, or oppose candidates for nomination in direct primary elections, including candidates running for State Senate, State Assembly, and United States House of Representatives in June 1984 and in 1986, but for the existence of section 11702 of the California Elections Code (the "Elections Code") and the threat of enforcement of this provision by the defendants.

3. The County Central Committee would endorse, support, or oppose candidates for nonpartisan offices, including candidates running for the County Board of Supervisors, Sheriff, District Attorney, County Clerk, and County Treasurer in the 1984 and 1986 elections, but for the existence of section 6, article II of the California Constitution and section 37 of the Elections Code and the threat of enforcement of these provisions by the defendants.

4. Before the California Courts began holding that the Elections Code and the California Constitution prohibited the endorsement of candidates for nonpartisan office, we endorsed such candidates, including individuals running for the Oakland City Council and for Mayor of Oakland. We believed we were not making these elections "partisan" merely by issuing such endorsement. We did not control who could run, nor did our endorsement or the endorsee's party affiliation appeal on the ballot.

5. One of the main functions of the County Central Committee is to inform Alameda County voters of the Democratic Party platform, the party's proposals for change, and its positions on other significant issues. Another of its main functions is to ensure that the party leadership, including elected Democratic officials, endorses the beliefs and positions of the Democratic Party of California. Because the County Central Committee is not allowed to endorse, support, or oppose candidates in direct primary elections or in elections for school, county, or city posts, it cannot educate the public about a candi-

date's position on issues, nor can it work to ensure that Party leaders are committed to the goals and ideals of the California Democratic Party.

6. The County Central Committee's inability to perform its educational function has greatly weakened our party and has disadvantaged the electorate. For example, our Committee would like to but has been unable to oppose a man by the name of Bob Reeder, a member of the Fremont City Council. Mr. Reeder is a registered Democrat, a fact he has publicized widely. Mr. Reeder has been quoted as saying that he registered as a Democrat because it was a wise political move, given that most of his constituents were members of that party. In fact, we believe that Mr. Reeder's positions on political issues are completely antithetical to the positions of our party. Because we are not allowed to speak out in city elections, we cannot set the record straight and inform the voters of what we believe the facts to be. Thus, Mr. Reeder, by default, is able to use our party label to his advantage.

7. Numerous unofficial groups regularly endorse candidates in primary and nonpartisan elections in Alameda County. These groups include: (a) various political clubs affiliated with the Democratic Party, including the Hayward Demos, the MGO (Montclair Greater Oakland) Democratic Club, the Niagra Democratic Club, the Berkeley Democratic Club, and the Muleskinners Democratic Club; (b) labor organizations, such as the Communication Workers of America, the AFL-CIO, and United Teachers of Oakland; (c) political action committees such as the Berkeley Citizens Action Committee; (d) other politically active associations, such as the Fremont Democratic Forum and the National Women's Political Caucus; and (e) newspapers, such as the Daily Review, the Oakland Tribune, and the San Francisco Newspapers.

8. In contrast to the materials distributed by these groups, which contain endorsements for both partisan primary candidates and candidates for school, county,

and city offices, the County Central Committee can issue mailers containing endorsements only for Propositions or Initiatives.

9. As demonstrated in paragraph 7, large numbers of individuals and groups, with widely varying political viewpoints, exercise their freedom to criticize or support candidates in Alameda County. Yet, the County Central Committee, which is the supposed leader of the Democratic Party in Alameda County, and which has among its membership (as does the Republican County Central Committee) some of the most informed and politically aware citizens, cannot say anything. This is a strange and anomalous result.

10. I became a member of the County Central Committee because I shared the political beliefs of the other members of that organization. I thought that the County Central Committee could advance these shared political beliefs far more effectively than I could as a single individual. One of the key methods available to our County Central Committee to further its shared beliefs is the issuance of endorsements and the public support of political candidates. Even as chairperson of that Committee, my individual endorsement is worth far less than the collective endorsement of the County Central Committee as a whole. Since the Committee cannot endorse in direct primary elections or in elections for school, county, or city officers, our whole purpose in associating together has been frustrated.

11. Our County Central Committee is already engaging in activities in preparation for the June 1984 primary and the November 1984 general election. If our County Central Committee were to issue endorsements in the June 1984 primary races, we would have to begin the endorsement process sometime in April. The period of time between April and June would be spent in distributing notices to the candidates of our intent to endorse, evaluating the candidates, raising money to fund

a slate card or mailer, and printing and distributing these endorsement materials.

12. Our County Central Committee would adopt more flexible rules regulating the time and place of our meetings than those contained in sections 8920 and 8921 of the Elections Code. The County Central Committee has not sought to disobey these rules because of the threat of enforcement of these provisions by the defendants.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Oakland, California, this 29 day of February, 1984.

/s/ Mary King
MARY KING

ADDENDUM H

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed April 9, 1984]

Date: April 9, 1984
Time: 10:30 a.m.

SUPPLEMENTAL DECLARATION OF WALTER W. LAYSON IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, WALTER W. LAYSON, declare as follows:

1. I make this supplemental declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am a resident of Contra Costa County, California and was, from

January 1975 to December 1978 and from January 1983 to October 1983 an elected member, and from 1979 to 1982 an appointed member of the Contra Costa County Republican Central Committee ("County Central Committee"). I have been a registered Republican since 1960 and in 1977-78 was a candidate for nomination in the 7th Congressional District of Contra Costa County. I have chaired GOP Congressional research teams, served as a political advisor in four Congressional campaigns, and was GOP county precinct chair in Contra Costa County from 1975 to 1976.

2. At the present time, I am running uncontested for the Republican nomination in the 7th State Senate District for 1984 and thus expect to be the official nominee of my party.

3. As a candidate for nomination in a Party primary, the restrictions placed on the State and County Central Committees by section 11702 of the Elections Code, forbidding the Committees from endorsing, supporting, or opposing candidates in direct party primary elections, has injured me directly.

4. Section 11702 prevents the County and State Central Committees from helping to pay my filing fee or financially to support my candidacy in any way. They cannot contribute in-kind services, such as secretarial or computer help, until after the June primary. Nor can they endorse me, which would publicize my campaign and improve upon both their and my credibility.

5. Because I am running unopposed, it is unlikely that party factionalism could develop within the County Central Committee over the endorsement of my candidacy.

6. The County Central Committee's endorsement would also have strongly benefitted me in my 1978 campaign for the Party's nomination in the 7th Congressional District.

7. In my long experience in the California Republican Party, I have found that the candidates, not the County Central Committees, run general election campaigns. Because of the complained-of provisions, the County Central Committees are too weak to manage this task. Hence, the County Central Committees have no actual or operational control over the candidate's campaign organization.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Francisco, California, this 9th day of April, 1984.

/s/ Walter W. Layson
WALTER W. LAYSON

ADDENDUM I

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed March 5, 1984]

Date: April 2, 1984
Time: 10:30 a.m.

DECLARATION OF LINDA POST IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, LINDA POST, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Chairperson of the San Francisco County Democratic Central Committee (the "County Central Committee"). I have been

a member of the County Central Committee since 1980 and have served as Chair since January, 1983. I have been an active participant in the activities of the Democratic Party of California since 1975, and have joined many unofficial Democratic clubs. From 1980 to 1982, I was a member of the Executive Committee of the Democratic State Central Committee.

2. The County Central Committee would endorse, support, or oppose candidates for nomination in direct primary elections, including candidates running for State Senate, State Assembly, and United States House of Representatives in June 1984 and in 1986, but for the existence of section 11702 of the California Elections Code (the "Elections Code") and the threat of enforcement of this provision by the defendants. In addition, as a voter, a concerned citizen, and an active member of the Democratic Party, I would like the State Central Committee to be able to endorse, support, or oppose candidates in direct primary elections, including candidates running for Governor, Lieutenant Governor, Treasurer, Controller, Secretary of State, and Attorney General. I would not only greatly benefit from knowing the position of the State Central Committee in these elections, I would also encourage and contribute to this endorsement process if that process were not prohibited by the existence of section 11702 and the threat of enforcement of this provision by the defendants.

3. The County Central Committee would endorse, support, or oppose candidates for school, county, or city offices, including candidates running for the County Board of Supervisors, BART Board, and Board of Education in the 1984 and 1986 elections, and for City Treasurer and City Attorney in 1985, but for the existence of section 6, article II of the California Constitution and section 37 of the Elections Code and the threat of enforcement of these provisions by the defendants.

4. Every year that I have been a member of the County Central Committee, someone has suggested that the County Central Committee endorse or otherwise support candidates in direct party primary and school, county, or city elections. The County Central Committee discusses this matter, and invariably concludes that it will not issue such endorsements or supoprt or oppose any candidate in these races because of the threat of enforcement by the defendants or others.

5. Before the California Courts began holding that the Elections Code and the California Constitution prohibited political parties from endorsing candidates running for nonpartisan office, we endorsed such candidates, including individuals running for Mayor, the County Board of Supervisors and District Attorney. We believed that merely by issuing endorsements, we were not making the election "partisan." We did not control who could run, nor did our endorsement or the endorsed candidate's party affiliation appear on the ballot.

6. One of the main functions of the County Central Committee and the State Central Committee is to inform voters of the Democratic Party platform, the party's proposals for change, and their positions on other significant issues. Another of their main functions is to ensure that the Party leadership, including elected officials, is responsive to the beliefs and positions of the members of the Democratic Party of California. Because the County Central Committee is not allowed to endorse, support, or oppose candidates in direct party primary or school, county, and city elections, it cannot educate the public about a candidate's position on issues, nor can it work to ensure that the Party leadership, including elected officials, are held accountable to the members of the California Democratic Party.

7. Numerous groups regularly endorse candidates in direct party primary and school, county, and city elec-

tions in San Francisco. These groups include: (a) various political clubs affiliated with the Democratic Party, including the Chinese American Democratic Club, Inc., the Harvey Milk Gay-Lesbian Democratic Club, the Alice B. Toklas Lesbian/Gay Democratic Club, District One Political Action, the Nihonmachi Democratic Club, and the District 8 Democratic Club (true and correct copies of materials distributed by the first four of these groups is appended to this declaration as Exhibit A); (b) other unofficial ad hoc political groups affiliated with the Democratic Party, including United Democrats '82 (a true and correct copy of the mailer distributed by this organization is appended to this declaration as Exhibit B); (c) labor organizations such as San Francisco C.O.P.E. (Committee on Political Education), the political arm of the AFL-CIO (a true and correct copy of a mailer distributed by this organization is appended to this declaration as Exhibit C); (d) other politically active associations, such as the Frederick Douglass Symposium (true and correct copies of a mailer from this organization is appended to this declaration as Exhibit D); (e) newspapers, such as the San Francisco Chronicle, the San Francisco Examiner, the San Francisco Bay Guardian, and the San Francisco Progress and (f) political action committees, such as Womens' Political Fund.

8. In contrast to the materials distributed by these groups, which contain endorsements for both nonpartisan and primary candidates, the County Central Committee can issue mailers containing endorsements only for Propositions or Initiatives. A true and correct copy of one of these mailers is appended to this declaration as Exhibit E.

9. The laws banning official party endorsements or support have thus created an odd dichotomy between the permissible activities of the official political party organizations on the other hand. As demonstrated in paragraph 7, large numbers of individuals and groups with

widely varying political viewpoints exercise their freedom to criticize or support San Francisco political candidates. Yet, the County Central Committee and the State Central Committee, which are the supposed leaders of the Democratic Party in San Francisco and the state, and which have among their memberships (as do their Republican counterparts) some of the best informed and most politically aware citizens, cannot say anything.

10. So long as the official political party organizations are prevented from expressing their views on political candidates, ad hoc groups "borrowing" the word "Democratic" and creating official-sounding titles will continue to have the ability to mislead voters into thinking that their slate mailer originated with, or was approved by, the official party organizations. If the County Central Committee and State Central Committee were allowed to distribute their own endorsement literature, such confusion could be minimized.

11. In many school, county, and city elections, the race is between a candidate whom people know is a Democrat and a candidate whom people know is a Republican. In the endorsements issued by Democratic Clubs, the Clubs clearly identify themselves as being affiliated with the Democratic Party. Further, major office holders, such as Mayor Feinstein, are widely known to be Democrats.

12. I became a member of the County Central Committee because I shared the political beliefs of the other members of that organization. I thought that the County Central Committee could advance these shared political beliefs far more effectively than I could as a single individual. One of the few ways for our Committee to do this is to issue an endorsement on behalf of the entire group. My individual endorsement is worth far less than such a collective endorsement. Since the Committee cannot endorse in direct party primary elections or in elections for school, county, or city posts, however, our whole purpose in associating together has been frustrated.

13. If our County Central Committee were to issue endorsements in the June 1984 primary races, we would have to begin the endorsement process in early April. The period of time between early April and June would be spent in distributing notices to the candidates of our intent to endorse, evaluating the candidates, raising money to fund a slate card or mailer, and printing and distributing these endorsement materials.

14. Our County Central Committee would adopt rules regulating the time and place of our meetings that are more flexible than those contained in sections 8920 and 8921 of the Elections Code. As a former member of the Democratic State Central Committee, I would also like to abolish sections 8660, 8661, 8663, 8664, 8665, 8667, and 8669 of the Elections Code, to allow that Committee to control the method of selecting its own members. In addition, I would favor the adoption of rules regulating the time and place of State Central Committee meetings that are more flexible than those contained in section 8710 of the Elections Code. Neither I nor the County Central Committee has sought to disobey or change these rules because of their existence and the threat of their enforcement by the defendants.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at San Francisco, California, this 29th day of February, 1984.

/s/ Linda Post
LINDA POST

[Exhibits A through E Omitted]

ADDENDUM J

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed April 2, 1984]

Date: April 9, 1984
Time: 10:30 a.m.

SUPPLEMENTAL DECLARATION OF LINDA POST IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, LINDA POST, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Chair of the San Francisco County Democratic Central Committee (the "County Central Committee"). I was duly elected to the position of chair by a unanimous vote of the full County Central Committee in January 1983. I have been a member of the County Central Committee since 1980 and have served as Chair since January, 1983.

2. I have read the memorandum filed by the defendants in opposition to Plaintiffs' Motion for Summary Judgment. The defendants' attempt to characterize the plaintiffs as entities and individuals who "have lost power struggles" has no basis in fact. The Democratic County Central Committees for San Francisco, Los Angeles, Alameda, Santa Clara, Solano and Placer Counties are very much in the mainstream of the California Democratic party and are well respected within the State Democratic party. Similarly, I consider myself to be very much in the mainstream of the State and local Democratic party. I have worked with all elements of the party, elected officials, and groups that comprise the constituencies within the party. For example, I have good working relations with Mayor Diane Feinstein; Congresswomen Sala Burton and Barbara Boxer; Peter Kelley, State Chair of the California Democratic party; Peter Kelley's predecessors; and the great majority of the elected officials in San Francisco.

3. The defendants' characterization of the function of county central committees is absolutely wrong. The county central committees do much more than just campaign in the November general elections for their party nominees. In fact, county central committees can and do perform the following functions: (a) voter registration drives; (b) getting the vote out on election day; (c) analyzing local and state ballot propositions, taking positions on such propositions, and publicizing our stands through slate cards, press releases, and other communications; and (d) taking action on a continuing basis on numerous issues brought to the county central committee by community groups.

4. Prior to the *Unger* decision, we were also able to and did endorse candidates running in school, county, and city elections.

5. Although the San Francisco County Democratic Central Committee is part of the Democratic party, we

are an independent working entity, elected locally. The Elections Code provides for the separate election of County Central Committee members. We have our own by-laws separate from those of the State Central Committee. We hire our own staff people, and are empowered and do raise funds independent of the State Central Committee. We can sue and be sued as a separate entity.

6. Differences of opinion regarding issues and candidates is part of democracy, and part of the political process. The full airing of different views is necessary. That's politics. On any issue put before our County Central Committee, there could be a difference of opinion. For example, in the November 1983 elections, we took a stand on each of the sixteen City propositions on the ballot. (*See* Exhibit A to my first declaration, filed March 5, 1984.) The defendants' logic would lead to the result that we should not have had the right to endorse on any of those propositions, because there was a "faction" created every time we had a difference of opinion. That is not what I understand democracy is all about.

7. We have had internal debates within our Committee many times in the past on various issues, but such debate has never "factionalized" the Committee before so as to disable it or to render it ineffective in the general election.

8. If we were afraid that endorsing on a given issue or candidate would be too divisive within our Committee, we could decide to not take a position, which would be our right, and which we have done in the past. The defendants would have the State of California dictate that we refrain from taking positions in all cases. This is paternalism. We are a responsible body that is capable of making the decision "endorse/not endorse" by ourselves.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 1st day of April, 1984, at San Francisco, California.

/s/ Linda Post
LINDA POST

ADDENDUM K

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed March 5, 1984]

Date: April 2, 1984
Time: 10:30 a.m.

DECLARATION OF THOMAS ROMERO IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, THOMAS ROMERO, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Chairperson of the Placer County Democratic Central Committee (the "County Central Committee"). I have been a member of

the County Central Committee since 1973 and have served as Chair from 1977 to June 1978 and from June 1980 to the present. I have been an active participant in the activities of the Democratic Party of California since 1973.

2. The County Central Committee would endorse, support, or oppose candidates for nomination in direct primary elections, including candidates running for State Senate, State Assembly, and United States House of Representatives in June 1984 and in 1986, but for the existence of section 11702 of the California Elections Code (the "Elections Code") and the threat of enforcement of these provisions by the defendants. Our Committee would have endorsed a candidate for United States House of Representatives in 1980 if it had been legal to do so.

3. One of the main functions of the County Central Committee is to inform Placer County voters of the Democratic Party platform, the party's proposals for change, and the party's positions on other significant issues. Our County Central Committee has even formulated its own platform, a true and correct copy of which is appended hereto as Exhibit A. Another of the County Central Committe's main functions is to ensure that the party leadership, including elected officials, endorses the beliefs and positions of the California Democratic Party.

4. Because the County Central Committee is not allowed to endorse, support, or oppose candidates in primary elections, it cannot educate the public about a candidate's position on issues, including issues contained in our Committee's platform, nor can it work to ensure that Party leaders are committed to the goals and ideals of the California Democratic Party. We cannot, for example, oppose the state legislators representing our county who voted to impose a fee on community college students, a position opposed to our Committee's platform. Nor can we even educate the public about the legislators' voting records.

5. On numerous occasions, voters have called me up, as Chair of the County Central Committee, to ask what our position is in regard to candidates in primary elections. I have had to respond that the County Central Committee is forbidden by law from commenting on these or other candidates for partisan office.

6. Numerous unofficial groups regularly endorse candidates in primary elections in Placer County. These groups include the County Taxpayers' Association, the Placer County Sheriffs' Association, labor organizations such as C.O.P.E. and the American Federation of Teachers, individual campaign organizations, and newspapers, such as the Auburn Journal, the Roseville Press Tribune, the Colfax Record, and the Lincoln News Messenger.

7. In contrast to these groups, which can endorse primary candidates, the County Central Committee must remain silent. It is unfair that the group most interested in the party platform and the party's position on issues cannot express its opinion while dozens of other individuals and groups freely publicize their views.

8. I became a member of the County Central Committee because I shared the political beliefs of the other members of that organization. I thought that the County Central Committee could advance these shared political beliefs far more effectively than I could as a single individual. Even as chairperson of that Committee, my individual endorsement is worth far less than the collective endorsement of the County Central Committee as a whole. Since the Committee cannot endorse in primary campaigns, our whole purpose in associating together has been frustrated.

9. Our County Central Committee would adopt more flexible rules regulating the time and place of our meetings than those contained in sections 8920 and 8921 of the Elections Code. We would also like to abolish sections 8660, 8661, 8663, 8664, 8665, of the Elections Code, giv-

ing the Democratic Party control over the method of selecting the members of its central policy-making organization. In addition, we would favor the adoption of more flexible rules regulating the time and place of State Central Committee meetings contained in section 8710 of the Elections Code. Neither I nor the County Central Committee has sought to disobey these rules because of the threat of enforcement of these provisions by the defendants.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Auburn, California, this 28 day of February, 1984.

/s/ Thomas Romero
THOMAS ROMERO

[Exhibit A Omitted]

ADDENDUM L

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

San Francisco, CA
Monday, April 9, 1984

MOTION FOR SUMMARY JUDGMENT AND MOTION TO DISMISS BEFORE THE HONORABLE MARILYN H. PATEL, JUDGE

REPORTED BY: PAUL SCHILLER, C.S.R.

[Filed in the Ninth Circuit Court of Appeals
April 18, 1984]

Appearances:

For the Plaintiffs:

JAMES J. BROSNAHAN, ESQUIRE
CEDRIC CHAO, ESQUIRE
MORRISON & FOERSTER
One Market Plaza
Spear Street Tower
San Francisco, CA 94105

For Defendants Other Than Defendant Filibozian [sic]:

JOHN K. VAN DE KAMP
Attorney General
State of California
1515 K Street
Sacramento, CA 95814

By: GEOFFREY L. GRAYBILL
Assistant Attorney General

For Defendant Philobosian:

DE WITT W. CLINTON
County Counsel
County of Los Angeles
500 West Temple Street
Los Angeles, CA 90012

By: PHILIP W. HICKOK
Deputy County Counsel

Monday, April 9, 1984

THE CLERK: Civil Case 83-5599, San Francisco County Democratic Central Committee, et al., versus March Fong Eu, et al., motion for summary judgment and motion to dismiss.

Counsel, your appearances, please.

MR. BROSNAHAN: Good morning, Your Honor, James A. Brosnahan for the plaintiffs.

MR. GRAYBILL: Geoffrey Graybill, Deputy Attorney General, for the defendant March Fong Eu.

MR. HICKOK: Phil Hickok, Deputy County Counsel, for defendant Philobosian.

MR. CHAO: Cedric Chao for plaintiff.

THE COURT: Who is going to be arguing on behalf of plaintiffs and defendants?

MR. BROSNAHAN: I will be arguing on behalf of plaintiffs, Your Honor.

MR. GRAYBILL: And I will be arguing on behalf of the defendants, except for defendant Philobosian who is separately represented, but I think I am going to be taking the bulk of the argument.

* * * *

THE COURT: Just a moment. If there is a central committee, who is the plaintiff in this action, who wishes to endorse a particular candidate, and they vote to do so in a direct primary, you are suggesting that they may do so and not be in violation of the law?

MR. GRAYBILL: Well, they are obviously in violation of Elections Code Section 11702.

THE COURT: Yes.

MR. GRAYBILL: In our view, they are not in violation of the Elections Code Section 29430 or 29102. Those are the statutes that plaintiffs ironically enough insist they must be prosecuted under.

THE COURT: Let me ask you about violation of 11702. The Central Committee of the City and County of San Francisco decides that there is a particular candidate they want to endorse in the direct primary, and despite the law to the contrary, based upon your assurances, of course, that they are not going to be prosecuted, they go ahead and endorse this candidate and let it be known through various kinds of brochures, communiques, whatever, that this particular candidate is being endorsed.

And you are approached by a very vociferous opposing candidate, who is very unhappy about this, because they violated the law. You are not going to enforce that provision against the Central Committee? I guess what you are saying is that you are not going to bring an action to enjoin them or seek any permanent penalties against them?

MR. GRAYBILL: Your Honor, pursuant to the Eleventh Amendment, the only thing that we are answerable for—

THE COURT: I want an answer to my question.

MR. GRAYBILL: The answer that I can give you is that we have not done so in the past. We do not view there being any criminal provisions involved here. Our attitude has been that it is primarily a statute protecting the rights of the individual party members that is available there. Without those provisions the party members themselves would not have a hook.

THE COURT: That does not answer my question. Are you prepared to tell those members of San Francisco County Democratic Committee that if they endorse candidate X in the primary, and candidate Y comes and complains to you, that you are not going to seek to enjoin them from violation of the law?

MR. GRAYBILL: You are asking a hypothetical question that I can't really answer. All I can do is point out to you what the history of our involvement is, what our attitude has been.

We have never been involved in the enforcement of those statutes, never. None of the defendants, either from a civil enforcement action with respect to nonpartisan endorsement or criminal enforcement, we are not here in a situation, and I don't think that we can bootstrap jurisdiction by asking me to answer a hypothetical question.

THE COURT: But the law says it is a violation of the law. They are entitled to know, because their first amendment rights are seriously implicated and presumably because they are involved actively in the political process, they want to obey the law, they want to know if they violate the law, what is going to happen to them.

MR. GRAYBILL: Your Honor, you might as well ask that question of their fellow party members who unfortunately are not represented before this court, because they can enforce those statutes.

[Remainder of Transcript and Certificate of Court Reporter Omitted]

ADDENDUM M

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed April 6, 1984]

DECLARATION OF DOLPH ANDREWS REGARDING AUTHORIZATION OF LAWSUIT

I, DOLPH ANDREWS, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Chair of the San Francisco County Republican Central Committee (the "County Central Committee"). The position of Chair of the County Central Committee is selected by a vote of the full County Central Committee. I have been a member of the County Central

Committee since 1976 and have served as Chair since January 1983.

2. Both I and the County Central Committee are plaintiffs in the second and third causes of action of the above-captioned lawsuit.

3. After consultation with other members of the County Central Committee, as well as with the Executive Director of the County Central Committee, I determined that it was appropriate and desirable for the County Central Committee and for me, as Chair, to join this suit as co-plaintiffs, and accordingly, I properly authorized that action.

4. This process was in accord and compliance with the procedures of the County Central Committee.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Francisco, California, this 7th day of April, 1984.

/s/ Dolph Andrews
DOLPH ANDREWS

ADDENDUM N

[Filed October 15, 1984]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-1851
[N.D. Cal. No. C-83-5599-MHP]

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs/Appellees,
v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants/Appellants.

[Designation of Counsel Omitted]

SUPPLEMENTAL DECLARATION OF DOLPH ANDEWS REGARDING AUTHORIZATION OF LAWSUIT BY SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE

I, DOLPH ANDREWS, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto, I am the Chair of the San Francisco County Republican Central Committee (the "County Central Committee"). I have been a member of the County Central Committee since 1976 and have served as Chair since January 1983.

2. Both I and the County Central Committee are plaintiffs in the Second and Third Causes of Action of the above-captioned lawsuit.

3. On April 6, 1984, I submitted a declaration to the District Court describing the background to the County Central Committee's participation as a co-plaintiff in this lawsuit.

4. On approximately May 8, 1984, after the entry of final judgment by the District Court, one of the members of the County Central Committee, Terence Faulkner, raised the issue whether the County Central Committee's participation in this lawsuit had been correctly authorized. We thereupon commenced the process of having the full County Central Committee examine the issue of its participation.

5. On June 29, 1984, the Steering Committee, whose existence is provided for by the County Central Committee's bylaws, met and discussed the County Central Committee's continued participation as a co-plaintiff in this lawsuit. I was present at this meeting. The Steering Committee voted after full discussion to recommend to the full County Central Committee that it continue as a co-plaintiff.

6. On July 31, 1984, the Issues Committee, which is one of the standing committees of the County Central Committee, also met and discussed the question of our continued participation as a co-plaintiff in this lawsuit. I was present at this meeting. The Issues Committee also voted to recommend that the County Central Committee continue as a co-plaintiff in this lawsuit. A true and correct copy of the Resolution adopted by the Issues Committee on July 31 is attached hereto as a portion of Exhibit 1.

7. At the September 6, 1984 meeting of the full County Central Committee, the question of the County Central Committee's participation as a co-plaintiff in this

lawsuit was discussed. After this discussion, a roll call was taken on the issue of continued participation. The County Central Committee voted 18 to 6 in favor of continued participation as a co-plaintiff in the Second and Third Causes of Action, which are the causes of action to which our committee was originally designated as a co-plaintiff. The full County Central Committee voted to adopt the Resolution which previously had been adopted by our Issues Committee on July 31. I was present at the September 6 meeting.

8. The members voting in favor of continued participation were: Dolph Andrews, Robert Bacci, Paul Vuksich (for Doug Binderup), Don Bowden, Al Martino (for Frank Crosetti), Lee Dolson, Ann Guth (for Leanne Guth), Leland Guth, Rich Hazlewood, Judy Feldman (for Mike Henderson), Larry Hughes (for Senator Milton Marks), Wally Myers (for Lester O'Shea), Harriet Ross, John Stark, Kevin Sullivan, Bill Terheyden, Dorothy Vuksich, and Max Woods.

9. The members voting against continued participation were: Stanley Bramwell, Larry Becker (for John Carney), Donald Donaldson, Terence Faulkner, Dennis Mark (for Bill O'Keeffe), and Thomas Spinosa.

10. Attached hereto as Exhibit 1 is a true and correct copy of the minutes of the September 6 Committee meeting, and two other items that are incorporated as part of the minutes. Attached to the September 6 minutes is a tally sheet, recording the votes for and against our committee's continued participation as a co-plaintiff in this lawsuit. The column with the heading "7-31-84 Suit Resolution" records the yes and no votes, as described in paragraphs 8 and 9 above. Also attached to the September 6 minutes is a copy of the Resolution that was adopted by our Issues Committee on July 31 (see paragraph 6 above) and by the full County Central Committee on September 6.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed this 9th day of October, 1984, at San Francisco, California.

/s/ Dolph Andrews
DOLPH ANDREWS

[Exhibit 1 Omitted]

ADDENDUM O

[Filed October 15, 1984]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-1851
[N.D. Cal. No. C-83-5599-MHP]

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs/Appellees,
v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants/Appellants.

[Designation of Counsel Omitted]

DECLARATION OF ROBERT R. BACCI REGARDING AUTHORIZATION OF LAWSUIT BY SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE

I, ROBERT R. BACCI, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Secretary of the San Francisco County Republican Central Committee (the "County Central Committee"). I am and have been since January 1983 an elected member of the County Central Committee.

2. One of my duties as Secretary is to record the minutes for our County Central Committee meetings.

3. I was present during the September 6, 1984 meeting of the County Central Committee, and served in my capacity as recording Secretary during said meeting.

4. Attached hereto as Exhibit 1 is a true and correct copy of the minutes of the September 6, 1984 meeting, and two other items that are incorporated as part of the minutes. Attached to the September 6 minutes is a true and correct copy of the official roll sheet, recording the votes of each Committee member on the resolution concerning the County Central Committee's continued participation as a co-plaintiff in the above-captioned litigation. The column with the heading "7-31-84 Suit Resolution" records the yes and no votes on this issue. Also attached to the September 6 minutes is a true and correct copy of the Resolution that was adopted by our Issues Committee on July 31 and by the full County Central Committee on September 6.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed this 9th day of October, 1984, at San Francisco, California.

/s/ Robert R. Bacci
ROBERT R. BACCI

[Exhibit 1 Omitted]

ADDENDUM P

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed April 6, 1984]

DECLARATION OF MARY GINGELL REGARDING AUTHORIZATION OF LAWSUIT

I, MARY GINGELL, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am a member of the State Central Committee of the Libertarian Party of California and serve on the Executive Committee of that body. I have been a member of the State Central Committee since November 1981 and served as Chair from August 1982 to February 1984.

2. Both I and the State Central Committee are plaintiffs in all of the causes of action of the above-captioned lawsuit.

3. On November 21, 1982, the State Central Committee, with a quorum present, voted to join the present lawsuit as a co-plaintiff in all three causes of action. I was personally present during the vote and during the discussions that preceded the vote. The discussions and the vote reflected the State Central Committee's approval of each of the allegations of the Complaint pertaining to the Committee.

4. This vote was taken in accordance and in compliance with the by-laws of the State Central Committee.

5. The participation of the State Central Committee in this lawsuit has been properly authorized.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Costa Mesa, California, this 3 day of April, 1984.

/s/ Mary T. Gingell
MARY GINGELL

ADDENDUM Q

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed August 13, 1984]

FURTHER DECLARATION OF MARY GINGELL REGARDING AUTHORIZATION OF LAWSUIT

I, MARY GINGELL, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am a member of the State Central Committee of the Libertarian Party of California and serve on the Executive Committee of that body (the "Executive Committee"). I have been a member of the State Central Committee since November 1981 and served as chair from August 1982 to February 1984.

2. Both I and the State Central Committee are plaintiffs in all of the causes of action of the above-captioned lawsuit.

3. I am aware of and have read the allegations of Mr. Thomas Spinosa and Mr. W. Stanley Adamson, which are based upon their reading of the November 21, 1982 minutes of the Executive Committee meeting, that the State Central Committee is not authorized to join the first and third causes of action.

4. At its November 21, 1982 meeting, which I attended and chaired, the Executive Committee discussed this lawsuit, including its challenges to (1) the prohibitions against preprimary endorsements, (2) the state's excessive restrictions on and regulations of political parties, as well as (3) the prohibitions against endorsements in nonpartisan elections.

5. The resolution that was passed at the November 21, 1982 meeting reflected that discussion and authorized without reservation the State Central Committee's participation as a plaintiff in this lawsuit. The resolution did not limit, and was not intended to limit, that authorization to only the challenge against the statutes prohibiting endorsements in nonpartisan elections.

6. I have conferred with Carolyn Treynor, a member of the Executive Committee and the individual who kept and transcribed the minutes of the November 21, 1982 meeting, about the allegations of Mr. Thomas Spinosa and Mr. W. Stanley Adamson. She agreed that at that meeting a discussion was had and a vote was taken to join this lawsuit without reservation or limitation to any of its parts. She told me that as an easy means to identify the lawsuit in the minutes, she referred to it as "the lawsuit to allow parties to endorse in non-partisan elections . . . ." She also told me that this phrase was her abbreviated method of referring to the lawsuit, and was not meant to describe the discussion or vote that took place at the meeting. She said specifically that this phrase was not meant to suggest that the State Central Committee was authorized to join only that portion of the lawsuit challenging the prohibition against endorsing nonpartisan elections.

7. Thus, the State Central Committee intended to be a plaintiff in all three causes of action of this lawsuit. We agree fully with the goals of this lawsuit, and the suggestions that we do not are absurd.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Costa Mesa, California this 7 day of August 1984.

/s/ Mary T. Gingell
MARY GINGELL

ADDENDUM R

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed April 19, 1984]

DECLARATION OF MARY KING REGARDING AUTHORIZATION OF LAWSUIT

I, MARY KING, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Chairperson of the Alameda County Democratic Central Committee (the "County Central Committee"). I have been a member of the County Central Committee since 1979 and have served as Chair since January, 1983.

2. The County Central Committee is a plaintiff in all of the causes of action of the above-captioned lawsuit.

3. On or about October 5, 1983, the County Central Committee, with a quorum present, voted to join this

lawsuit as a co-plaintiff in all three causes of action. I was personally present during the vote and during the discussions that preceded the vote. The discussions and the vote reflected the County Central Committee's approval of each of the allegations of the Complaint pertaining to the Committee, including those allegations relating to the Committee's intent to endorse candidates if it were allowed to do so, and to the Committee's desire to alter the rules complained of in the third cause of action.

4. This vote was taken in accordance and in compliance with the by-laws of the County Central Committee.

5. The participation of the County Central Committee in this lawsuit has been properly authorized.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Oakland, California, this 7 day of April, 1984.

/s/ Mary V. King
MARY KING

ADDENDUM S

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed August 13, 1984]

FURTHER DECLARATION OF MARY KING REGARDING AUTHORIZATION OF LAWSUIT

I, MARY KING, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Chairperson of the Alameda County Democratic Central Committee (the "County Central Committee"). I have been a member of the County Central Committee since 1979 and have served as Chair since January 1983.

2. The County Central Committee is a plaintiff in all three causes of action of the above-captioned lawsuit.

3. I am aware of and have read the allegations of Mr. Thomas Spinosa and Mr. W. Stanley Adamson, which are based on their reading of the October 5, 1983 minutes of our County Central Committee meeting, that the County Central Committee is not authorized to join the third cause of action.

4. At its October 5, 1983 meeting, which I attended and chaired, the County Central Committee discussed this lawsuit, including its challenges to the state's excessive restrictions on and regulation of political parties as well as its challenges to prohibitions against preprimary endorsements and endorsements in nonpartisan elections.

5. The motion that was passed by the County Central Committee during its October 5, 1983 meeting reflected that discussion and stated without limitation that the County Central Committee should be a plaintiff in this lawsuit. The motion did not limit, and was not intended to limit, our Committee's participation in the first and second causes of action.

6. Thus, the County Central Committee properly authorized its participation in all three causes of action of this lawsuit.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Oakland, California, this 6 day of August 1984.

/s/ Mary V. King
MARY KING

ADDENDUM T

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed April 6, 1984]

DECLARATION OF ROBERT MACK REGARDING AUTHORIZATION OF LAWSUIT

I, ROBERT MACK, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Chairperson of the Santa Clara County Democratic Central Committee (the "County Central Committee"). I have been a member of the County Central Committee since 1966 and have served as Chair since January 1983.

2. The County Central Committee is a plaintiff in all of the causes of action of the above-captioned lawsuit.

3. The County Central Committee, as well as the Executive Board of the County Central Committee, have discussed and reviewed the Committee's participation as a co-plaintiff in this lawsuit. The County Central Committee, with a quorum present, properly authorized its participation in this lawsuit. I was personally present during each of the above-described meetings.

4. The allegations of the Complaint in this lawsuit that pertain to our Committee accurately reflect the intent of the County Central Committee.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Sunnyvale, California, this 5th day of April, 1984.

/s/ Robert Mack
ROBERT MACK

[Proof of Service Omitted]

ADDENDUM U

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed April 6, 1984]

DECLARATION OF LINDA POST
REGARDING AUTHORIZATION OF LAWSUIT

I, LINDA POST, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Chair of the San Francisco County Democratic Central Committee (the "County Central Committee"). I was duly elected to the position of chair by a unanimous vote of the full County Central Committee in January 1983. I have been a member of the County Central Committee since 1980 and have served as Chair since January, 1983.

2. Both I and the County Central Committee are plaintiffs in all three of the causes of action of the above-captioned lawsuit.

3. On or about September 29, 1983, the County Central Committee, with a quorum present, voted to join this lawsuit as a co-plaintiff in all three causes of action. I was personally present during the vote and during the discussions that preceded the vote. The discussions and the vote reflected the County Central Committee's approval of each of the allegations of the Complaint pertaining to the Committee, including those allegations relating to the Committee's intent to endorse candidates if it were allowed to do so, and to the Committee's desire to alter the rules complained of in the third cause of action.

4. This vote was taken in accordance and in compliance with the by-laws of the County Central Committee.

5. The participation of the County Central Committee in this lawsuit has been properly authorized.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Francisco, this 1st day of April, 1984.

/s/ Linda Post
LINDA POST

ADDENDUM V

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed April 6, 1984]

DECLARATION OF CATHERINE C. ROCKWOOD REGARDING AUTHORIZATION OF LAWSUIT

I, CATHERINE C. ROCKWOOD, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I have been the Southern Vice Chairperson of the Solano County Democratic Central Committee (the "County Central Committee") since January 1982, and have been a member of the County Central Committee since 1978. I have been a member of the Democratic State Central Committee since January 1983.

2. The County Central Committee is a plaintiff in the second and third causes of action of the above-captioned lawsuit.

3. The County Central Committee, with a quorum present, at its August, September, and October 1983 monthly meetings, fully discussed the present lawsuit and the Committee's participation in the lawsuit. I was personally present during the September and October meetings. The County Central Committee voted to join this lawsuit as a co-plaintiff in the second and third causes of action. The discussions and the vote reflected the County Central Committee's approval of each of the allegations of the Complaint pertaining to the Committee, including those allegations relating to the Committee's intent to endorse candidates in school, county, and city elections if it were allowed to do so, and to the Committee's desire to alter the rules complained-of in the third cause of action.

4. This vote was taken in accordance and in compliance with the by-laws of the County Central Committee.

5. The participation of the County Central Committee in this lawsuit has been properly authorized.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Vallejo, California, this 4th day of April, 1984.

/s/ Catherine C. Rockwood
CATHERINE C. ROCKWOOD

ADDENDUM W

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed April 19, 1984]

DECLARATION OF THOMAS ROMERO REGARDING AUTHORIZATION OF LAWSUIT

I, THOMAS ROMERO, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Chairperson of the Placer County Democratic Central Committee (the "County Central Committee"). I have been a member of the County Central Committee since 1973 and have served as Chair from 1977 to June 1978 and from June 1980 to the present.

2. Both I and the County Central Committee are plaintiffs in the first and third causes of action of the above-captioned lawsuit.

3. The County Central Committee, with a quorum present, at its January, September, and November monthly meetings, fully discussed the present lawsuit and the Committee's participation in the lawsuit. I was personally present during these meetings. The County Central Committee voted to join the present lawsuit as a co-plaintiff in the first and third causes of action. The discussions and the vote reflected the County Central Committee's approval of each of the allegations of the Complaint pertaining to the Committee, including those allegations relating to the Committee's intent to endorse candidates if it were allowed to do so, and to the Committee's desire to alter the rules complained-of in the third cause of action.

4. This vote was taken in accordance and in compliance with the by-laws of the County Central Committee.

5. The participation of the County Central Committee in this lawsuit has been properly authorized.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Auburn, California, this 11 day of April, 1984.

/s/ Thomas Romero
THOMAS ROMERO

ADDENDUM X

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed August 13, 1984]

FURTHER DECLARATION OF THOMAS ROMERO REGARDING AUTHORIZATION OF LAWSUIT

I, THOMAS ROMERO, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Chairperson of the Placer County Democratic Central Committee (the "County Central Committee"). I have been a member of the County Central Committee since 1973 and have served as Chair from 1977 to June 1978 and from June 1980 to the present.

2. Both I and the County Central Committee are plaintiffs in the first and third causes of action of the above-captioned lawsuit.

3. I am aware of and have read the allegations of Mr. Thomas Spinosa and Mr. W. Stanley Adamson, which are based on their reading of the January 20, 1983 minutes of our County Central Committee meeting, that the County Central Committee is not authorized to join the third cause of action.

4. At its January 20, 1983 meeting, which I attended and chaired, the County Central Committee discussed this lawsuit, including its challenge to the state's excessive restrictions on and regulation of political parties, as well as its challenge to the statutory prohibition against preprimary endorsements.

5. The resolution that was passed by the County Central Committee during its January 20, 1983 meeting reflected that discussion and broadly authorized the County Central Committee to join as a co-litigant in the proposed lawsuit. The resolution did not limit and was not intended to limit that authorization to the cause of action challenging the prohibition against preprimary endorsements.

6. My wife, who is also a member of the County Central Committee, and I kept and transcribed the minutes of the January 20, 1983 meeting of the County Central Committee. As a shorthand means of identifying the proposed lawsuit in the minutes of the January 20, 1983 meeting, we referred to it as "a suit which would end the restriction on preprimary endorsements." This phrase was used only as an abbreviated method of identifying this lawsuit, and was not meant to describe the discussions preceding the County Central Committee's vote or the intent or content of the motion that was carried authorizing the County Central Committee to be a co-litigant in this action. Specifically, this phrase was not meant to suggest that the County Central Committee was authorized to join only that portion of the lawsuit challenging the prohibition against preprimary endorsements.

7. Thus, the County Central Committee intended to be a plaintiff in the first and third causes of action of this lawsuit.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Auburn, California, this 3rd day of August 1984.

/s/ Thomas Romero
THOMAS ROMERO

ADDENDUM Y

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed April 6, 1984]

DECLARATION OF CAROLYN WALLACE REGARDING AUTHORIZATION OF LAWSUIT

I, CAROLYN WALLACE, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Chairperson of the Los Angeles County Democratic Central Committee (the "County Central Committee"). I have been a member of the County Central Committee since 1978 and have served as Chair since January 1983.

2. Both I and the County Central Committee are plaintiffs in the second cause of action of the above-captioned lawsuit.

3. On or about Oct. 18, 1983, the County Central Committee, with a quorum present, voted to join the present lawsuit as a co-plaintiff in the second cause of action. I was personally present during the vote and during the discussions that preceded the vote. The discussions and the vote reflected the County Central Committee's approval of each of the allegations of the Complaint pertaining to the Committee, including those allegations relating to the Committee's intent to endorse candidates in school, county, and city elections if it were allowed to do so.

4. This vote was taken in accordance and in compliance with the by-laws of the County Central Committee.

5. The participation of the County Central Committee in this lawsuit has been properly authorized.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Malibu, California, this 2 day of April, 1984.

/s/ Carolyn Wallace
CAROLYN WALLACE

ADDENDUM Z

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed June 1, 1984]

PLAINTIFFS' FURTHER SUBMISSION RE AUTHORIZATION OF LAWSUIT

Plaintiffs previously filed with this Court a declaration from the chair or vice-chair of each of the plaintiff Central Committees establishing that the Committees' participation in this lawsuit has been properly authorized. Plaintiffs hereby submit further documentation, namely, Central Committee bylaws and those portions of Committee minutes bearing on the authorization issue.

The documents submitted herewith are as follows:

Exhibit 1: Bylaws, San Francisco County Democratic Central Committee.

Exhibit 2: Minutes, dated August 24, 1983, San Francisco County Democratic Central Committee.

Exhibit 3: Minutes, dated September 29, 1983, San Francisco County Democratic Central Committee.

Exhibit 4: Minutes, undated, San Francisco County Democratic Central Committee.

Exhibit 5: Bylaws, San Francisco County Republican Central Committee.

Exhibit 6: Bylaws, Alameda County Democratic Central Committee.

Exhibit 7: Minutes, dated October 5, 1983, Alameda County Democratic Central Committee.

Exhibit 8: Bylaws, Santa Clara County Democratic Central Committee.

Exhibit 9: Minutes, dated September 2, 1982, Santa Clara County Democratic Central Committee.

Exhibit 10: Minutes, dated September 1, 1983, Santa Clara County Democratic Central Committee; and Minutes dated September 15, 1983, Executive Board of Santa Clara County Democratic Central Committee.

Exhibit 11: Bylaws, Solano County Democratic Central Committee.

Exhibit 12: Bylaws, Placer County Democratic Central Committee.

Exhibit 13: Minutes, dated January 20, 1983, Placer County Democratic Central Committee.

Exhibit 14: Minutes, dated September 15, 1983, Placer County Democratic Central Committee.

Exhibit 15: Minutes, dated November 17, 1983, Placer County Democratic Central Committee.

Exhibit 16: Bylaws, Libertarian Party of California.

Exhibit 17: Minutes, dated November 21, 1983, Libertarian Party of California.

Exhibit 18: Declaration of Terence Faulkner, member of San Francisco County Republican Committee, filed with the Ninth Circuit Court of Appeals, May 8, 1984.

The bylaws of the Los Angeles County Democratic Central Committee will be produced as soon as they are received by plaintiffs' counsel. To the extent that additional minutes bearing on the authorization issue can be located, such minutes will also be produced as soon as they become available. Finally, the San Francisco County Republican Central Committee will discuss its participation in this lawsuit on June 7, 1984, its next regularly scheduled meeting.

Dated: June 1, 1984

Respectfully submitted,

JAMES J. BROSNAHAN
CEDRIC C. CHAO
PAUL R. DIESETH
DEBORAH LEON
MORRISON & FOERSTER

/s/ By: Cedric Chao
CEDRIC C. CHAO

[Exhibits 1 through 18 and Proof of Service Omitted]

ADDENDUM AA

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed July 11, 1984]

PLAINTIFFS' THIRD SUBMISSION RE AUTHORIZATION OF LAWSUIT

Plaintiffs previously filed with this Court a declaration from the chair or vice-chair of each of the Central Committee plaintiffs establishing that the Committees' participation in this lawsuit has been properly authorized. On June 1, 1984, plaintiffs filed with this Court a "Further Submission re Authorization of Lawsuit," which included eighteen (18) exhibits. Said Further Submission consisted of Central Committee bylaws and those portions of Committee minutes bearing on the authorization issue.

Plaintiffs hereby make a third submission of bylaws and portions of Committee minutes which were received

by plaintiffs' counsel subsequent to the June 1, 1984 filing. For ease of reference, these exhibits are numbered so as to continue the sequence of the exhibits contained in the June 1, 1984 submission. The documents submitted herewith are as follows:

Exhibit 19: Minutes, dated May 22, Executive Commitee of the Libertarian Party of California.

Exhibit 20: Minutes, dated August 7, 1983, Executive Committee of the Libertarian Party of California.

Exhibit 21: Minutes, dated November 12, 1983, Executive Committee of the Libertarian Party of California.

Exhibit 22: Minutes, dated August 25, 1983, Solano County Democratic Central Committee.

Exhibit 23: Minutes, dated September 28, 1983, Solano County Democratic Central Committee.

Exhibit 24: Bylaws, Los Angeles County Democratic Central Committee.

Exhibit 25: Minutes, dated October 11, 1983, Los Angeles County Democratic Central Committee.

Exhibit 26: Minutes, dated November 8, 1983, Los Angeles County Democratic Central Commitee.

Exhibit 27: Order, dated June 18, 1984, Ninth Circuit Court of Appeals.

This submission completes the production of bylaws and minutes bearing on the authorization issue for seven of the eight Central Committee plaintiffs. Plaintiffs' counsel has been informed that on June 7, 1984, the

eighth Central Committee plaintiff, the San Francisco County Republican Central Committee, decided to continue its discussion of its participation in this lawsuit at the Committee's next regularly scheduled meeting.

Dated: June 19, 1984

Respectfully submitted,

JAMES J. BROSNAHAN
CEDRIC C. CHAO
PAUL R. DIESETH
DEBORAH L. LEON
MORRISON & FOERSTER

By /s/ Cedric C. Chao
CEDRIC C. CHAO
Attorneys for Plaintiffs

[Exhibits 19 through 27 and Proof of Service Omitted]

ADDENDUM BB

[Filed October 15, 1984]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-1851

[N.D. Cal. No. C-83-5599-MHP]

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs/Appellees,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants/Appellants.

On Appeal from the United States District Court
for the Northern District of California

NOTICE OF ACTION BY PLAINTIFF/APPELLEE
SAN FRANCISCO COUNTY REPUBLICAN
CENTRAL COMMITTEE
REGARDING AUTHORIZATION OF LAWSUIT

[Designation of Counsel Omitted]

TO THE HONORABLE EUGENE A. WRIGHT, OTTO R. SKOPIL, AND WILLIAM A. NORRIS, CIRCUIT JUDGES:

One of the issues raised by the defendants is whether the eight central committee plaintiffs intended to be co-plaintiffs in this lawsuit. In response to this question, all eight of the central committee plaintiffs filed with the District Court copies of their bylaws, as well as declarations from their respective chairs or vice-chairs describing the process by which they decided to join as plaintiffs herein. Seven of the eight central committees discussed and voted on the question of participation as a co-plaintiff prior to the time that the complaint in this action was filed. These seven central committees filed copies of their committee minutes with the District Court.

Based on this record and on the District Court's Order Following Remand, the parties submitted briefs to this Court on the authorization issue. At that time, plaintiffs informed this Court that the eighth central committee plaintiff—San Francisco County Republican Central Committee—had taken up, but had not yet resolved, the question whether it would adopt the initial action of its Chair, Dolph Andrews, in joining the committee as a plaintiff herein. *See* Memorandum of Plaintiffs Regarding Authorization of Litigation, filed July 9, 1984.

By this pleading, plaintiffs hereby notify this Court and the defendants that the San Francisco County Republican Central Committee voted on September 6, 1984 by a margin of 18 to 6 to continue to be a co-plaintiff in this lawsuit. *See* Supplemental Declaration of Dolph Andrews Regarding Authorization of Lawsuit at ¶ 7; and Declaration of Robert R. Bacci Regarding Authorization of Lawsuit, filed herewith. Prior to the September 6 vote of the full Committee, both the Steering Committee and the Issues Committee of the San Francisco County Republican Central Committee had voted to recommend that the Central Committee continue as a plaintiff. *See* Supplemental Declaration of Dolph Andrews at ¶¶ 5-6.

Attached as Exhibit 1 to both the Supplemental Declaration of Dolph Andrews and the Declaration of Robert Bacci are copies of the following items: (1) the minutes of the September 6 County Central Committee meeting; (2) the tally sheet recording the "yes" and "no" votes of the committee members at the September 6 meeting; and (3) the Resolution that was adopted by the Issues Committee on July 31 and by the full County Central Committee on September 6.

Plaintiffs submit that the September 6 action by the San Francisco County Republican Central Committee disposes of the question raised by the defendants with regard to that committee's intent to be a plaintiff herein.

Dated: October 15, 1984

Respectfully submitted,

JAMES J. BROSNAHAN
CEDRIC C. CHAO
PAUL R. DIESETH
MORRISON & FOERSTER

By /s/ Cedric C. Chao
CEDRIC C. CHAO
Attorneys for Plaintiffs/
Appellees

[Proof of Service Omitted]

ADDENDUM CC

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-1851

DC #83-5599MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE, LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,

Plaintiffs-Appellees,

v.

MARCH FONG EU, Secretary of State of the State of California, JOHN VAN DE KAMP, Attorney General of the State of California, ARLO SMITH, District Attorney of San Francisco County, *et al.*,

Defendants-Appellants.

APPELLANTS' SUPPLEMENTAL BRIEF
RE APPELLEES' AUTHORIZATION
OF LITIGATION

INTRODUCTION

Pursuant to this Court's order filed June 18, 1984, granting leave to file supplemental briefs, this brief is restricted to the issue "concerning the authority of appellees to bring this action and appeal" and to 10 pages.

As this Court recognized by its order filed on May 25, 1984, the record before this Court on appeal, and before

the trial court when the judgment appealed from was entered, is inadequate to determine this issue.[1] The determination of this issue is critical to the resolution jurisdictional issues of whether plaintiffs/appellees have equitable and constitutional standing to bring this action and whether prudential principles governing standing preclude a federal court from deciding the legal issues raised by the complaint in the context of this case.[2]

Despite the apparent direction of this Court to make findings of fact and conclusions of law, the District Court did not conduct a trial or create an evidentiary record. Without even considering evidence which this Court had before it, and without the participation of the parties, the District Court made findings which have absolutely no evidentiary support.

If the District Court missed the point of this Court's order of May 25, 1984, appellees did not. On or about June 1, 1984, and again after this Court's order of June 18, 1984, appellees, apparently heeding this Court's observation that appellees had not provided discovery requested by appellants, filed with the District Court what were represented by appelles' counsel to be copies of the by-laws of some of the appellee central committes and heavily censored versions of minutes of some of the central committees deemed by appellees' counsel to be material to the issue of authorization.

These documents are not admissible in evidence. There is no proper authentication or foundation and the pur-

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[1] Notwithstanding the District Court's views expressed in its order of June 1, 1984, appellants raised this issue below by every means permitted them by the District Court. (Appellants' Supplemental Brief filed May 8, 1984, pp. 5-7.)

[2] Appellants' challenges to the standing of appellees and the adequacy of the proceedings in the District Court to determine those issues included factors in addition to whether the appellee central committees had actually authorized this action to be brought in their names. (See Appellants' Supplemental Brief filed May 8, 1984 [sic], pp. 1-17, 23-37.)

ported minutes are inadmissible hearsay. Thus, no findings can be properly made from the documents.

However, as will be demonstrated by the remainder of this brief to the extent permitted by the page limitation, the documentation submitted by appellees appear to contradict the inadmissible declarations of individual plaintiffs and other persons regarding the authorization issue and indicate that in all likelihood the central committees did not authorize this action, but that members of the Committee for Party Renewal have maneuvered to appear to act for them.

If it were not beyond the scope permitted this brief, appellants would present argument that this Court should reverse the judgment and order that the entire action be dismissed without a trial on the issue of authorization due to the appellees' absence of equitable standing and the imperatives of "prudential" standards governing standing to invoke the jurisdiction of a federal court. The documents manifest the reasons that the appellees would, as they have relentlessly, resist producing them and oppose any discovery concerning their authenticity, accuracy, and foundation. Appellants have therefore filed simultaneously with this brief a motion for leave to file a reply brief.

Appellants have also filed simultaneously with this brief a motion for leave to file an appendix containing the appellees' submittals to the District Court subsequent to this Court's order of May 25, 1984, which are referred to herein.

THE LIBERTARIAN PARTY OF CALIFORNIA

The declaration of Mary Gingell asserts that the State Central Committee of the Libertarian Party of California "voted to join the present lawsuit as a co-plaintiff *in all three causes of action.*" (Appendix to appellants' Emergency Motion for Stay on Appeal, vol. VII, pp. 934-935; emphasis added.)

Exhibits 17, 19, 20 and 21 even in their drasticly censored versions demonstrate that the Libertarian Party of California did not authorize this lawsuit to be brought in its name.

Exhibit 17 purports to record that the Executive Committee conditionally authorized participation in "the lawsuit to allow parties to endorse in non-partisan election, subject to their being no fiscal expense to this body and subject to prior approval by the LPCO officers following input from volunteer attorneys."

None of the subsequent purported minute entries of the Libertarian Party demonstrate that either of the conditions were fulfilled. The minute entry purportedly set forth as Exhibit 20 states as of August 7, 1983, that no position had even been developed for review by Libertarian Party Committee attorneys as required by the purported resolution of the Executive Committee at the November 21, 1982 meeting.

Exhibit 21 purports to quote Ms. Gingell as informing the Committee that she had become a party to this lawsuit in her own right and sought consent from the Committee that her participation would not be inconsistent with her role as chairperson through February of 1984. If the Committee had authorized its becoming a party to this lawsuit, Ms. Gingell's request would have been unnecessary.

It is apparent that the Executive Committee never contemplated, let alone authorized, participation in the lawsuit challenging anything other than the prohibition against endorsements in non-partisan elections.

The Executive Committee's purported conditional approval of limited participation in this lawsuit subject to review by the Party's attorneys may very well have been inspired by the awareness that such action by the Executive Committee or the Party is not authorized by the by-

laws of the Party. (See by-laws 2 and 4(e); see also by-law 9(1) [Exh. 16].)

THE LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE

The declaration of Carolyn Wallace, dated April 2, 1984 (appellants' appendix, vol. VII, pp. 932-933), asserts that the Los Angeles County Democratic Central Committee voted to join the present lawsuit as a co-plaintiff in the second cause of action (challenge to prohibition against endorsement for non-partisan office) on or about October 18, 1983, with a quorum present.

Exhibit 26 appears to contradict Ms. Wallace's statement, both of the time of authorization and the nature of any purported authorization. Exhibit 26 purports to demonstrate that the Los Angeles County Democratic Central Committee adopted its Rules Committee's report and recommendation which stated in apparent paraphrase:

> "Rules Committee agrees with the concept of party self-governance but recommends against LACDCC becoming a plaintiff in all causes of action because it is not sure of the ultimate outcome."

At best, an inference here would be that the Committee may have authorized participation as to the third cause of action challenging statutes governing the structure and procedures of the State and County Central Committees. Moreover, it is possible to infer from this documentation that the L.A. Committee did not authorize participation in any of the causes of action. In any event, the Los Angeles County Democratic Central Committee is not named as a plaintiff as to either the first cause of action (regarding partisan endorsements) or the third cause of action (regarding organization and procedures of the State and County Committees).

Moreover, there is nothing to indicate compliance with section B of article XX of the by-laws of the Los Angeles County Democratic Central Committee (Exh. 24) requiring a 60 percent affirmative vote to pass a resolution or with the quorum requirement of subsections 2 and 3 of section D of article VIII (Exh. 24).

THE SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE

Appellees' submittals to the District Court do not contain anything with respect to the San Francisco County Republican Central Committee other than representations of appellees' counsel that the Committee may "discuss" its participation in this action in some future meeting. (Appendix, vol. X, pp. 7-104.)

Thus, the evidence submitted by appellants (Appendix to Appellants' Brief, vol. IX, pp. 58 et seq.) demonstrates conclusively that the San Francisco Republican Central Committee did not authorize participation in this lawsuit despite its plaintiff Andrews' declaration *suggesting* otherwise. (Appendix, vol. VII, pp. 936-937.)

THE SAN FRANCISCO DEMOCRATIC CENTRAL COMMITTEE

The declaration of Linda Post, dated April 1, 1984 (appellants' appendix, vol. VI, pp. 930-931), asserts that the San Francisco County Democratic Central Committee, with a quorum present, "voted to join this lawsuit as a co-plaintiff in all three causes of action; that the vote was taken in accordance and in compliance with the by-laws of the County Central Committee and that participation in the lawsuit has been properly authorized."

Appellants have obtained a copy of what is represented to them to be the complete text of the minutes for the meeting of the Committee held on September 29, 1983. A true and correct copy of the version presented to appellants is attached hereto as Exhibit A.

It should be noted that the entry on page 3 which was preserved by the appellees as Exhibit 3 comes at the end of a two-hour meeting held in the evening and is sandwiched in between routine announcements. There is reason to question whether a quorum was present at the time the activity reflected in that particular minute entry occurred (by-laws, art. II, § 4 [Exh. 1]) and there is no indication that notice was provided of that subject matter prior to the meeting. (By-laws, art. I, § 4; art. II, § 6.) It should also be noted that if the entry preserved by the appellees manifests a vote taken, the format differs dramatically from the record of votes taken on other matters at that same meeting.

Whatever Exhibits 2, 3 and 4 may turn out to be, they create a conflict amongst themselves as to what, if any, involvement the Committee has authorized in connection with this litigation and with the declaration of Ms. Post.

THE ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE

Exhibit 7 to the appellees' submittals to the District Court purports to be the minutes of the meeting of the Alameda County Democratic Central Committee on October 5, 1983. This heavily censored document purports to contain an entry indicating that this lawsuit was considered by that Committee. The entry is ambiguous on the question of whether any vote was taken on the issue.

Moreover, the purported entry in the minutes for October 5, 1983, indicates that the Committee purportedly considered only the issue of a "Committee's right to endorse." The Alameda County Democratic Central Committee is listed as a plaintiff in the third cause of action regarding the structure and procedure of party committees; however, the chairperson of the Alameda County Democratic Central Committee is not listed as a plaintiff in that cause of action.

Exhibit 7 also indicates, as did Exhibit 2, that the initiative for bringing this lawsuit did not come from wthin the Committee itself but from persons who in all likelihood are members of, or were acting on behalf of, the National Committee for Party Renewal.

THE SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE

Exhibit 10 purports to be the minutes at a meeting of the Santa Clara County Democratic Central Committee held on September 1, 1983, approximately one year after the meeting purportedly reflected in Exhibit 9. It should be noted that the Committee at this point has a new chair and that a new Committee had been elected in the June 1982 primary elections and apparently took office in January of 1983.

Thus, it is apparent that the Committee in operation at the time this lawsuit was filed had not authorized the Committee's participation in the lawsuit. As stated in subsection B1 of article VII (p. 4) of the by-laws, the Executive Committee is only authorized to act on behalf of the Central Committee "when it is impossible for the Central Committee to act." There is nothing which indicates the Central Committee could not have acted at its next meeting as proposed by the new chairman.

Moreover, there is nothing to indicate that the preemptive tactics of appellee Christman purported in Exhibit 9 complied with quorum (§ C, art. VI) and resolution consideration (subsec. B-10, art. VII) requirements of the by-laws (Exh. 8). Mr. Christman is a member of the Committee on Party Renewal (Exh. 10, p. 2).

THE SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE

Exhibit 22 of appellees' submittals to the District Court purports to be a portion of the minutes of a meet-

ing of the Solano County Democratic Central Committee held on August 25, 1983. Exhibit 23 purports to be a heavily censored copy of the minutes of the Committee for its meeting of September 28, 1983. The format of the two sets of minutes is completely different.

The second page of Exhibit 22 purports to indicate that the Committee considered a letter from the attorney for plaintiffs in this action and for the Committee on Party Renewal.

No member of the Solano County Democratic Central Committee is an individual plaintiff in this action. The missing minutes of the October 1983 meeting and the apparent lack of true interest in the endorsements issue reflected in Exhibit 23 indicate that the Solano Committee considers itself a curious spectator rather than a party to the lawsuit by the Committee for Party Renewal. It should be noted that Solano County Democratic Central Committee is not a named plaintiff with respect to the first cause of action involving endorsements of candidates for a party's nomination in the primary election.

THE PLACER DEMOCRATIC CENTRAL COMMITTEE

Exhibits 13, 14 and 15, which purport to be heavily censored minutes of meetings of the Placer County Democratic Central Committee, do not suggest anything other than it was a curious spectator with regard to the lawsuit it considered to have been brought by the California Committee for Party Renewal.

The complaint lists the Placer County Committee as plaintiff on both the first (partisan endorsements) and third (party structure and procedure) causes of action. There is no indication Placer even considered joining the third. Nor is there any indication that it considered itself or acted to make itself a party to the action at all.

Respectfully submitted,

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State of California
N. EUGENE HILL
Assistant Attorney General

By: /s/ Geoffrey L. Graybill
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[Exhibit A and Proof of Service Omitted]

ADDENDUM DD

[Filed July 9, 1984]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-1851
[D. Ct. No. 83-5599-MHP]

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs/Appellees,
v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants/Appellants.

On Appeal From the United States District Court
for the Northern District of California

MEMORANDUM OF PLAINTIFFS REGARDING AUTHORIZATION OF LITIGATION

[Designation of Counsel Omitted]

I. *INTRODUCTION*

This litigation is unique in that it unites a diverse and broad-based group of leading County Central Com-

mittees, the Libertarian State Central Committee, and prominent Democratic and Republican party leaders in seeking to restore their First Amendment rights of political speech and association. In their attempts to divert attention away from the merits of this litigation, the appealing defendants[1] argue that the so-called authorization issue somehow warrants dismissal of this litigation. However, if the veil of advocacy and rhetoric constructed by defendants is pierced, it becomes evident that the authorization question is not a bona fide issue. The District Court in its June 1, 1984 Order Following Remand was absolutely correct in finding and concluding that "the plaintiff central committees and each of them have authorization and capacity to bring and maintain this litigation." *See* Order Following Remand at 4, appended as Exhibit A to the Notice of District Court Order Following Remand. The fundamental First Amendment issues framed in this litigation remain, and despite defendants' best efforts, cannot be avoided.

Plaintiffs respectfully request that this Court find that there are no material issues of fact regarding the authority of the Central Committee plaintiffs to bring this litigation, affirm the District Court's June 1, 1984 findings of fact and conclusions of law regarding authorization, and affirm the District Court's original Orders and Final Judgment on the merits.

II. *DEFENDANTS HAVE WAIVED THEIR RIGHT TO CHALLENGE PLAINTIFFS' AUTHORITY OR CAPACITY TO BRING THIS ACTION*

The first time the defendants raised the issue of the Central Committee plaintiffs' authorization of this action was in a brief footnote to the Memorandum in Support

[1] The defendants who joined in the appeal from the District Court's Orders and Final Judgment are Secretary of State Eu, Attorney General Van de Kamp, and District Attorneys Smith (San Francisco County) and Himmelsbach (Santa Clara County).

of Defendants' Motions to Dismiss filed on March 5. *See* Appendix to Appellants' Emergency Motion for Stay on Appeal, Vol. V, p. 625. Outside of this passing reference, defendants made no mention of the authorization question in any papers filed with the District Court. Indeed, the only evidence they ever submitted on this issue was the declaration of Terence Faulkner which was filed with their supplemental appellate brief on May 8, 1984.

By failing to aver promptly that plaintiffs lacked capacity to bring this suit, defendants have waived their right to raise this issue. *See* Order Following Remand at 2. Rule 9(a) of the Federal Rules of Civil Procedure states that challenges to the capacity or authority of a party to sue must be raised "by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge." As Judge Patel correctly noted in her Order Following Remand, by failing to allege this defense in a timely fashion, "defendants are properly deemed to have waived the issue." Order Following Remand at 2.

Curiously, defendants do not respond in their brief to this finding and conclusion or discuss the authorities cited by the District Court. Defendants' silence is revealing, for it reflects the absence of contrary authority. This Court has consistently held that denial of a party's capacity or authority to sue must be raised by specific negative averment in the answer or in a motion filed prior to the answer. *See, e.g., Summers* v. *Interstate Tractor and Equipment Co.*, 466 F.2d 42, 49-50 (9th Cir. 1971); *Marks* v. *Brucker*, 434 F.2d 897, 899 (9th Cir. 1970). In *Summers*, this Court noted that Rule 12 "provides that every defense must be raised in the responsive pleading or by motion before pleading." 466 F.2d at 49. It thus held that since the defendant "did not raise the defense of plaintiff's capacity to sue by specific negative averment in its answer, or at any time until

appeal, it is deemed to have waived that defense." 466 F.2d at 50. Similarly, in *Marks*, this Court stated that where a party's lack of capacity to sue is at issue, it "must be specially averred else it is waived." 434 F.2d at 899.

Here, the appealing defendants made no such negative averment in their answer or at any time before they filed their answer. The defendants' general denial in their answer that the plaintiffs are not entitled to any recovery does not satisfy the requirements of Rule 9(a). *Ralston Oil & Gas Co.* v. *Gensco, Inc.*, 706 F.2d 685, 692 (5th Cir. 1983). *See Garbincius* v. *Boston Edison Co.*, 621 F.2d 1171, 1174 (1st Cir. 1980). Defendants' first reference to the authorization issue did not come until nearly three months after they had filed their answer, and even then, the reference was relegated to a footnote. They, like the defendants in *Summers* and *Marks*, did not fully address this issue until the appeal. Thus, defendants' right to make arguments regarding the authorization of the lawsuit must be deemed to have been waived.

III. *DEFENDANTS' COURSE OF CONDUCT FOLLOWING THIS COURT'S MAY 25, 1984 ORDER OF REMAND SHOULD PREVENT DEFENDANTS FROM RAISING NEW FACTUAL ISSUES ON APPEAL*

The District Court decided that it was fully capable of entering its findings and conclusions following this Court's Order of Remand without the necessity of holding an evidentiary hearing. This demonstrates that the District Court, which is in the best position to judge the legitimacy and bona fides of the defendants' attack on the Central Committee plaintiffs' authorization procedures, has concluded that such attacks are much ado about nothing. As demonstrated below, the District Court was absolutely correct.

Defendants fault the District Court for not conducting an evidentiary hearing on the authorization issue following this Court's May 25, 1984 Order. What defendants omit to tell this Court is that at no time did defendants request such an evidentiary hearing. At no time did defendants petition the District Court to reconsider its June 1, 1984 Order Following Remand. At no time did defendants bother to submit to the District Court proposed findings of fact and conclusions of law. Defendants chose to take no action in the District Court and, instead, now improperly attempt to use this Court as a fact finding body.

Defendants' inaction following this Court's May 25, 1984 Order of Remand belies their current expressions of doubt concerning whether the Central Committee plaintiffs intended to be parties to this litigation. Given defendants' course of conduct, this Court can properly find that the objections voiced for the first time in defendants' most recent appellate brief are untimely and should be disregarded. *See Garcia* v. *American Marine Corp.*, 432 F.2d 6, 8 (5th Cir. 1970) (facts may not be presented for the first time on appeal).

IV. *DEFENDANTS' ANALYSIS OF THE COMMITTEE BY-LAWS AND MINUTES IS PURELY SPECULATIVE, CONTRADICTED BY ALL AVAILABLE EVIDENCE, AND THUS RAISES NO ISSUE OF MATERIAL FACT*

All the available evidence indicates that the Central Committee plaintiffs properly authorized their participation in this lawsuit. In April, plaintiffs submitted declarations from the chair or vice-chair of each Central Committee attesting to that fact. As Judge Patel stated:

> the court has before it uncontroverted declarations under penalty of perjury from each of the eight central committee plaintiffs stating authorization has been given and the method by which it was

> given. The court is not prepared to assume that the eight officers lied under penalty of perjury nor is there any basis for disregarding the declarations. There being no facts in evidence controverting the declarations, the court finds that the plaintiff central committees and each of them have authorization and capacity to bring and maintain this litigation.

Order Following Remand at 4.

Following this Court's Order of Remand, plaintiffs engaged in the time consuming process of locating and collecting the Central Committee by-laws and the minutes concerning the authorization of this litigation. These materials were voluntarily filed with the District Court in two separate submissions, dated June 1 and June 19. Admittedly, the Committee minutes may not have been maintained in as much detail as the minutes of a major corporation's board of directors meetings, kept by a Corporate Secretary whose function it is to maintain such records. But that is to be expected, for the Central Committee plaintiffs are composed of laypersons who conduct party business during their evenings and weekends. They could not have foreseen that many months after they decided to join this lawsuit, defendants would choose to pick apart the language they had used to record their discussions concerning this lawsuit. Despite defendants' best efforts to find fault with such documents, the fact remains that these by-laws and minutes are entirely consistent with the previously submitted declarations. It is abundantly clear that these Committees intended to be plaintiffs to this litigation.[2]

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[2] Lacking evidence that the Central Committees did not authorize their participation in this suit, defendants have once again resorted to baseless innuendo, this time directed at the plaintiff Committee for Party Renewal, which is alleged to "have maneuvered to appear to act for [the Central Committees]." Defendants' Memo at 3. This is a further example of the "intemperate rhetoric" and "hyperbole and unfounded accusations" which the District Court

Only one Central Committee plaintiff, the San Francisco County Republican Central Committee, has not yet voted in full Committee on the question of participation in this lawsuit. That fact has never been denied. The declaration of Dolph Andrews, their chair, establishes that he chose to join this lawsuit as an individual plaintiff and, believing that he had the authority to authorize the participation of the Central Committee without taking it before the Committee for a vote, asked that they also be added as a plaintiff. The full Committee has since taken up the question whether to ratify the chair's decision to have the Committee join as a plaintiff. No final vote has yet been taken on the question.

Regardless of the outcome of the San Francisco Republican Central Committee's vote to ratify their chair's initial actions, the fact remains that the remaining seven Central Committee plaintiffs *did* discuss and vote on participation in this lawsuit. Nonetheless, defendants have seen fit to question whether these seven Central Committee plaintiffs have the authority to bring this lawsuit. Defendants introduce no evidence to support their charges, instead choosing to fabricate arguments from the texts of the Committee minutes and bylaws.

Defendants' most serious accusations are those based upon patent misreadings of these minutes and bylaws. For example, defendants claim that Mary Gingell, the former chair of the Libertarian Party, had to ask her Committee if she could become a paintiff, drawing from this the conclusion that the Libertarians had not authorized this action. Defendants' Memo at 5. In truth, the function which Ms. Gingell asked permission to perform, "doing the California Activist," consisted of writing and distributing the monthly Libertarian newsletter.

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found abundant in defendants' papers below. Order of District Court at 26 n.8, attached as Exhibit B to the Brief of Plaintiffs/Appellees filed with this Court on May 8, 1984.

Plaintiffs' Third Submission re Authorization of Lawsuit, Exh. 21.

Defendants claim that the minutes of the Alameda County Democratic Central Committee are "ambiguous on the question of whether any vote was taken on the issue." Defendants' Memo at 8. In fact, the minutes state "M/S/C—Perry/Ducey—That the ACDCC be a plaintiff in this lawsuit." Plaintiffs' Further Submission, Exh. 7. This entry indicates that a motion to join this lawsuit was made, seconded, voted on, and carried, *i.e.*, "M/S/C," thereby corroborating unequivocally the declaration previously filed by the Alameda chair.

Finally, defendants claim that the Santa Clara County Democratic Central Committee's vote to join the lawsuit in 1982 became void in 1983. Defendants' Memo at 9-10. In fact, their bylaws clearly state that the Committee "is an ongoing organization" (Plaintiffs' Further Submission, Exh. 8, Article I.B.), a provision which persuaded the Executive Committee that the old vote was still effective so that a new vote need not be taken. *See* Plaintiffs' Further Submission, Exh. 10, p. 2.

Defendants also choose to imply without any factual support that where the minutes are silent on whether particular bylaw requirements were met, the Committee violated those requirements. Defendants complain, for example, that "there is no indication" that the quorum and other bylaws requirements were met during the votes taken at the Los Angeles and San Francisco Democratic Committees. *See* Defendants' Memo at 6, 7, 8. Of course, there is no evidence from the documentation that the bylaw requirements were not met. There is thus no reason to disbelieve the sworn declarations long since submitted by plaintiffs.

Defendants also pose spurious questions about which of the three causes of action certain plaintiffs joined. *See* Defendants' Memo at 5 (Libertarians), 6 (Los An-

geles), 8-9 (Alameda), 11 (Placer). As previously stated, the secretaries of these Committees could not be expected to appreciate the legal niceties apparently demanded by defendants. Plaintiffs submit that the minutes unequivocally demonstrate the Committees' commitment to this lawsuit. To the extent that a particular set of minutes does not spell out all the details of authorization, the chair's declaration fills in the gaps. Defendants offer *no* contrary evidence to derogate the sworn declarations of the Committee chairs that identify in detail which causes of action the Committees joined. In short, defendants' imaginative attacks on the authorization of the Central Committee plaintiffs have no basis in fact.

Moreover, defendants seem to have forgotten that this lawsuit has thirteen individual plaintiffs, including the chairs of some of the most influential County Central Committees in Cailfornia and current members of the Republican and Democratic State Central Committees. The authorization of these individuals is not in question. As the District Court noted in its Order Following Remand, "there are a number of parties to this litigation whose authorization is not in question and who have been held to have standing" by the Court. Order Following Remand at 5, n.2. Thus, since defendants clearly have not successfully challenged the authorization of each Central Committee plaintiff, and have never challenged the authorization of the individual plaintiffs, this Court should proceed to decide the merits of plaintiffs' case. *See Natural Resources Defense Council, Inc.* v. *United States Environmental Protection Agency*, 507 F.2d 905, 910-11 (9th Cir. 1974) (deciding appeal even though only one plaintiff of several was held to have standing).

V. *CONCLUSION*

For all the above reasons, plaintiffs respectfully request that this Court affirm the District Court's find-

ings of fact and conclusions of law regarding plaintiffs' authorization of this action, as well as the District Court's Orders of April 16, 1984, and May 3, 1984 granting plaintiffs partial summary judgment and denying the motions to dismiss.

Dated: July 9, 1984

Respectfully submitted,

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Plaintiffs/Appellees

[Proof of Service Omitted]

ADDENDUM EE

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-1851

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE, LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,

Plaintiffs-Appellees,

v.

MARCH FONG EU, Secretary of State of the State of California, JOHN VAN DE KAMP, Attorney General of the State of California, ARLO SMITH, District Attorney of San Francisco County, *et al.*,

Defendants-Appellants.

DEFENDANTS' REPLY TO PLAINTIFFS' MEMORANDUM REGARDING AUTHORIZATION OF LITIGATION

[Designation of Counsel Omitted]

INTRODUCTION

By its Order filed August 1, 1984, this Court granted appellant's permission to file a reply memorandum restricted to the question of whether the plaintiff central committees authorized the subject lawsuit. Therefore, in this memorandum appellants will address the arguments

presented in the District Court's Order Following Remand filed June 1, 1984, and the Memorandum of Plaintiffs re Authorization of Litigation filed on or about July 9, 1984, which were directed to this subject.

The District Court makes essentially two arguments in response to this Court's Order on Remand directing that the District Court make findings of fact and conclusions of law as to whether appellee central committees authorized this lawsuit. Plaintiffs' memorandum reiterates the arguments of the District Court.

The District Court asserts that the question of whether the central committees authorized this litigation must be raised in the answer as an affirmative defense in accordance with Rule 9 of the Fed. R. Civ. P. or it is waived and the issue was not so raised so that it is not properly an issue on appeal.

The Order Following Remand also concludes (p. 4) that the plaintiff central committees gave authorization for this litigation and bases this conclusion on "uncontroverted declarations under penalty of perjury from each of the eight central committee plaintiffs stating authorization has been given and the method by which it was given." In this connection, the District Court asserts that defendants never made an issue in the context of the motions for summary judgment of whether the central committees had authorized this litigation and did not take opportunities purportedly available after April 9, 1984, to challenge the declarations (Order, pp. 2-3).

All of the conclusions and assertions of the Order Following Remand are without support in the record and are contrary to law. Defendants raised the issue of capacity to sue in accordance with Rule 9, Fed. R. Civ. P. Moreover, the issue of whether the central committees authorized this litigation was raised in the context of the motions for summary judgment.

An element of plaintiffs' prima facie case is that the challenged statutes imposed a substantial burden on plaintiffs' First Amendment right to associate as members of their political parties and express their views as a party. During the course of the proceedings in the District Court, defendants had been developing evidence, nearly all of which the District Court simply ignored in its memorandum order dated May 3, 1984, which demonstrated the challenged statutes were in fact the policies of the political parties to which plaintiffs belonged.

Such evidence in the context of motions for summary judgment would at a minimum raise issues of fact material to whether the statutes imposed substantial burdens on their freedom to associate as members of their parties. Moreover, the same evidence would manifest *all* plaintiffs' lack of standing including in the sense that their constitutional challenges to the statutes were not ripe for adjudication. (See *McMichael* v. *County of Napa* (9th Cir. 1983) 709 F.2d 1268; *Pence* v. *Andrus* (9th Cir. 1978) 586 F.2d 733, 736-738 (per Judge Wright).)

Evidence that the purported plaintiff central committees did not authorize this litigation would be a further demonstration of this point. Defendants utilized every means permitted them by the District Court to obtain information regarding whether the central committees had authorized the litigation. Plaintiffs took advantage of the restrictions which the District Court placed on defendants and denied defendants access to the information which was in the exclusive possession and control of plaintiffs. Defendants had no evidence with which to contradict the declarations even if they had seen them during or before the hearing on April 9 [several of the declarations were not filed and served for several days after the hearing] because defendants simply denied them access to it.[1]

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[1] The Faulkner declaration filed by defendants with their supplemental brief on appeal was prepared by and transmitted to de-

As demonstrated in defendants' memorandum filed in this Court on or about June 28, 1984, the requested information would have contradicted the declarations and highlighted their manifest incompetence as declarations "from each of eight central committee plaintiffs" as asserted by the District Court. Even uncontradicted, the declarations could not support the District Court's findings of authorization. The portions of the declarations upon which the Court relied are legal conclusions and hearsay for which there are no exceptions and are therefore insufficient to support the Court's findings. The documents further highlight the error committed by the District Court in granting judgment for defendants on their motion for summary judgment.

Leaving aside the serious questions raised by the documents in Appendix X regarding the credibility of individual plaintiff declarants, plaintiffs' conduct in obstructing access to the documents which are obviously critical to the progress of the judicial process of determining the truth of the material facts on the issue of authorization by the central committees warrants denial of access to the equitable jurisdiction of the federal courts which their complaint seeks to invoke. (Cf. *Abbott Laboratories* v. *Gardner* (1967) 387 U.S. 136, 155.)

Defendants therefore respectfully request that this Court reverse the judgment below and remand with an order that the entire action be dismissed.

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fendants' counsel by Mr. Faulkner's attorney who initially contacted defendants' counsel after this matter was on appeal. Plaintiffs' counsel has taken the position that Rule 7-103 of the Rules of Professional Conduct of the State Bar of California precludes defendants' counsel from interviewing members of any of the purported plaintiff central committees except through formal discovery to which plaintiffs' counsel would object. Plaintiffs have taken the added precaution of not providing a roster of members of the committees as requested by defendants (Appendix VI, pp. 834-835).

THE FINDINGS OF THE DISTRICT COURT ON REMAND ARE ERRONEOUS AS A MATTER OF LAW AND ARE NOT SUPPORTED BY THE RECORD

A review of the record demonstrates that the findings and assertions of the District Court in its Order Following Remand are without support therein.

Defendants who filed other than answers by way of disclaimer conducted a joint defense of the action (see Appendix II, pp. 172-176; Appendix VI, pp. 791, 795). Moreover, the collective answer to the first amended complaint (Appendix II, p. 173:24-27) sets forth the challenge to plaintiffs' capacity to bring suit in accordance with Rule 9, Fed.R.Civ.P. (Appendix II, p. 125:23).

In February 1984, defendants filed a status conference certificate with the District Court in which it informed the court that it intended to raise standing issues and to conduct discovery with regard to those issues (Appendix II, p. 174:1-12). Defendants requested that District Court issue an order limiting discovery to jurisdictional and standing issues pending a ruling on defendants' anticipated motion to dismiss (*Id.*).

At the status conference held on February 27, 1984, the District Court informed defendants that plaintiffs' anticipated motion for summary judgment would proceed at the earliest possible time permitted by its calendar in light of the appending Primary Election in California in June of 1984 (Appendix IX, p. 33:17-19). The court set March 5, 1984, as the date all notices of motion should be filed and April 2 for hearing on the motions (Appendix IX, p. 35:9-24). With regard to defendants' need for discovery, the Court stated to defendants' counsel (Appendix IX, p. 37:13-20):

> "The Court: Counsel, let's do this, because the time is short, admittedly. I will give you a chance to respond to their motions for summary judgment without any discovery in your response. If you need

> additional discovery, set forth a response what additional discovery you need and approximately how much time you need to do it. I will not rule on any motion for summary judgment if there is discovery that needs to be done in order to address it."

The court acknowledged that Fed.R.Civ.P. 56(f) entitled defendants to discovery prior to a ruling on a motion for summary judgment (see *Alghanim* v. *Boeing Company* (9th Cir. 1973) 477 F.2d 143, 148) and instructed that any permitted discovery be conducted informally (Appendix IX, p. 38).

After receiving and reviewing the voluminous documentation filed by plaintiffs in support of their motion, defendants were compelled to seek a three-week extension of time to file their opposition (Appendix IX, pp. 45-48). The Court allowed a one-week extension and in so ruling stated (*Id.*, p. 53:2-6, 15-25, 54:1-2):

> "The Court: I know that doesn't give defendants as much time as they asked for, but time is crucial. I am keeping in mind the burden that you do have.
>
> "If there are factual issues that you have not been able to reach, either because of discovery or investigation problems, then I suggest what you do is that you set those forth, those problems forth in your papers when you file them. Now, it is not automatically going to give you additional time to file papers after the hearing. So don't depend upon that. But if those are critical, and you have not been able to compile whatever factual matters that you have in order to respond, you may set those forth in your papers here when you file them on March the 26th."

On or about March 19, 1984, and in accordance with the instructions of the District Court, defendants advised plaintiff's counsel by telephone of its preliminary discovery request, which was confirmed by letter. The request specified the production of the by-laws and

minutes of the plaintiff county central committees and Libertarian Central Committee. An alternative request was that if minutes did not exist for some of the central committees, a competent sworn statement be given of the method by which the central committee purportedly authorized the lawsuit (Appendix VI, pp. 828-830, 834-835).

Plaintiffs did not provide the requested documentation until after this Court's Order on Remand filed May 25. In accordance with the District Court's instructions, defendants advised the Court in their papers filed on March 26 in opposition to plaintiffs' motion for summary judgment and in support of defendant's motion for summary judgment of the discovery requested and of their efforts to secure it (Appendix VI, pp. 828-837). Defendants also explained the relevance of the requested documentation to the standing and First Amendment issues in the case; most of the brief was devoted to the developing the common base for the motion to dismiss and the motion for summary judgment (see esp. Appendix VI, pp. 713:3-25; 720:5-26; 722:10-20; 723-724:1-8; 736:14-25; 829:5-27; Appendix VII, pp. 918-821).

Defendants did not receive copies of the declarations regarding purported authorization filed by plaintiffs on Friday, April 6, 1984, until after the hearing on the motions to dismiss and summary judgment held on Monday, April 9, 1984 (Appendix VIII, p. 47:4-11). Plaintiffs filed several additional declarations a few days later.

At the hearing defendants' counsel requested that any order which may issue adverse to the State be stayed for a period sufficient "to evaluate just what the nature of the order is and what procedure we should follow at that point." (Appendix VIII, p. 51:19-24.) The District Court's response was (Appendix VIII, p. 58:8-11):

> ". . . I would deny a stay and you may indicate in the order, if you want a stay you can go to the

Ninth Circuit for maybe not so humble an opinion as mine."

Moreover, the Court stated that its order would be issued in writing that day or the following day (Appendix VIII, p. 57:14-25). The Court requested plaintiffs' counsel prepare an order (*Id.*). The reason for the urgency as stated by the Court was the imminence of the primary elections (Appendix VIII, p. 52:4-16). Plaintiffs provided the Court with an order on April 10, 1984 (Appendix IX, pp. 20-27).

At the hearing defendants again raised the need for continuing discovery and the relevance of it (Appendix VIII, pp. 47-50:1-22) and again advised the Court that plaintiffs had not provided the minutes and by-laws as requested (Appendix VIII, p. 49:20-25). Despite the previous assurances provided to defendants, the Court simply ignored defendants request (Appendix VIII, p. 50:20-22).

Thus, the District Court made it very clear that defendants had but one option after April 9 and that was to present its case to this Court. The District Court filed its order and judgment on April 16, 1984; defendants filed their notice of appeal and motion for a stay on that same day. By its own direction, the District Court lost jurisdiction for further proceedings in connection with its order (*Sumida* v. *Yumen* (9th Cir. 1969) 409 F.2d 654, 656-657). The District Court did not file its memorandum decision until more than a week after this Court issued its stay order on April 24, 1984.

One day prior to this Court's Order on Remand, which was filed on May 25, 1984, the District Court filed an order in this case entited "Further Status Conference," a copy of which is attached hereto as Exhibit A. The Order instructs counsel for defendants and plaintiffs to file a joint status certificate (see, e.g., Appendix II, pp. 172-176) within ten days of the filing by this Court of a disposition of the appeal.

The District Court filed its Order Following Remand several days before the joint status certificate was due to be filed and within a week after this Court's Order on Remand was filed. When it filed the Order Following Remand, the District Court divested itself of jurisdiction. (See *Sumida* v. *Yumen, supra,* 409 F.2d at 656-657). The District Court filed its Order on June 1, 1984; the California Primary was to be held on June 5, 1984.

The District Court's Order on Remand demonstrates that if any proceedings in this action remain to be considered by the District Court after decision by this Court, considerations of fairness make it appropriate for this Court to order that the proceedings be handled by a different judge. (*Cord* v. *Smith* (9th Cir. 1964) 338 F.2d 516, 525-526.)

PLAINTIFFS' CONDUCT WARRANTS DISMISSAL OF THE ACTION ON EQUITABLE GROUNDS

The record demonstrates that the actions of the individual plaintiff declarants, the plaintiff Committee on Party Renewal and the Committee's counsel have obstructed the judicial process of ascertaining the truth concerning whether the central committees named in the complaint are in fact plaintiffs as alleged.

Plaintiffs have selectively presented inadmissible declarations and documentation in circumstances they have created which have prevented their being subjected to discovery, cross-examination and trial. Plaintiffs acknowledge that documentation submitted after remand is subject to interpretation and creates conflicts with the declarations and assert that the minutes do not really mean what they purport to say because those persons who prepared them did not understand what they were doing (plaintiffs' memo re authorization, pp. 6-9).

The record demonstrates that the plaintiffs National Committee for Party Renewal and its California chap-

ters instigated and orchestrated this litigation. Counsel for plaintiffs is actually counsel for the Committee for Party Renewal (see, e.g., Appendix X, pp. 15, 113). The Committee began its drive for litigation no later than September 1982 (Appendix X, pp. 49, 51). When the District Court asked counsel for the Committee why the litigation was not brought earlier, he responded (Appendix IX, p. 10:9-13):

> "Just a gathering of authorities, if the court please, and *the organization of the plaintiffs, in order to bring the case*, was quite a laborious enterprise, given all of the different political organizations and all of that." (Emphasis added.)

What the conflicting inferences of the documentation and declarations and the conduct of plaintiffs in the District Court demonstrate is that plaintiffs are not before this Court and were not before the District Court with clean hands and have not done equity in connection with the matters for which they seek equitable relief. An order from this Court that the entire action be dismissed is therefore entirely appropriate.

Defendants therefore respectfully request that this Court reverse the judgment below and remand with an order that the entire action be dismissed.

DATED: August 11, 1984

JOHN K. VAN DE KAMP
Attorney General
N. EUGENE HILL
Assistant Attorney General

By: _____
GEOFFREY L. GRAYBILL
Deputy Attorney General

[Exhibit A and Proof of Service Omitted]